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IN THE HIGH COURT OF BOMBAY AT GOA

PIL WRIT PETITION NO. 30 OF 2023

1. The Goa Foundation, through its Secretary, Dr. Claude Alvares, Age 75 years, Having Regd. Office at Room No. 7, Above Mapusa Clinic, Mapusa, Goa 403507. PAN No. AAAAG0249C, Income: Rs.10-15,00,000/- per annum (approx.), Registration No. - 23/Goa/ 86, Email id: goafoundation @gmail.com.

2. Roshan Mathias, age 44 years, H. No 280, Bamon Vaddo, Candolim Village, Bardez, Goa — 403515. PAN No. AAAAG0249C, Income: Rs.05-10,00,000/- per annum (approx.), Email id: goadjroshan@gmail.com.

... PETITIONERS

Versus

1. The Town and Country Planning Dept., thr. the Chief Town Planner (Planning), 2nd Floor, Dempo Towers, Patto, Panaji, Goa - 403001.

2. The State of Goa, thr. its Chief Secretary, Secretariat, Porvorim, Goa - 403521.

3. The Town and Country Planning Board., thr. its Member Secretary, 2nd Floor, Dempo Towers, Patto, Panaji, Goa - 403001.

4. The North Goa Panaji Planning and Development Authority (NGPDA), thr. its Member Secretary, Mala, Panaji, Goa - 403001.

5. Mr. R.K. Pandita, Town and Country Planning Department, North Goa District Office, 302, Govt. Building Complex, Mapusa, Bardez, Goa – 403507.

6. Mr. Michael Lobo, House No.181/15, Bhatti Vaddo, Parra, Bardez, Goa - 403510.

7. Mr. Francisco Silveira, Former MLA, resident of House No. 38/1, Dandi, Agassaim, Goa - 403104. ... RESPONDENTS

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Ms. Norma Alvares, Senior Advocate with Mr. Om D'Costa and Ms. M. Simoes, Advocates for the Petitioners.

Mr. Shyam Mehta, Senior Advocate with Ms. Prachi Dhanani, Ms. Rohini Jaiswal, Mr. Raushan Kumar and Mr. Jayant Karn i/b Veritas Legal Advocates for Respondent Nos. 1 and 2.

Mr. Hanumant D. Naik with Ms. P. Gaykar, Advocates for Respondent Nos. 4 and 5.

Mr. Pankaj Pai Vernekar with Ms. Nikita A. Sinai Nadkarni and Mr. B. Faterpekar, Advocates for Respondent No. 6.

Mr. Jagannath J. Mulgaonkar with Ms. Shweta Parulekar and Ms. Divyabharati Naidu, Advocates for Respondent No. 7.

WITH

PIL WRIT PETITION NO. 24 OF 2023

Calangute Constituency Forum, Through its President Premanand Diukar, Indian National, aged 61 years, son of Chandrakant Diukar resident of 6/93, Cobra Waddo, Bardez, Calangute, Goa 403516. Pan Card No. APOPD9696L. Aadhar Card No. 302431235499. Reg. No. of Forum: 465/GOA/2019. PAN CARD of Forum: AAEAC7264P. Annual Income: 3,60,000 Per annum. ... PETITIONER

Versus

1. The State Of Goa, Through the Chief Secretary, Secretariat, Porvorim Goa.

2. The Town & Country Planning Department, Through its Chief Town

Planner, Government of Goa, having its office at 5th floor, EDC Patto Plaza, Behind Bus Stand, Patto Centre, Panaji Goa, 403001.

3. North Goa Planning and Development Authority, Through its Member Secretary, Having its office at Archdiocese building, First floor, Mala Link Road, Mala Panaji Goa.

4. The Goa Town & Country Planning Board, Through its Member Secretary, Government of Goa, the Chief town Planner, Having its office at 5th floor, Kamat Towers, EDC Patto Plaza, behind bus stand, Patto Centre, Panaji Goa 403001.

5. The Village Panchayat of Calangute, Through its Secretary, Having its office at Calangute - Anjuna Road, Naika Vaddo, Cobra Vaddo, Calangute Goa 403516.

6. The Village Panchayat Candolim, Through its Secretary, Fort Aguada Rd, Candolim - Goa 403515.

... RESPONDENTS

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Mr. Rohit Bras De Sa with Mr. Joel Pinto and Ms. Sara Desai, Advocates for the Petitioner.

Mr. Shyam Mehta, Senior Advocate with Ms. Prachi Dhanani, Ms. Rohini Jaiswal, Mr. Raushan Kumar and Mr. Jayant Karn i/b Veritas Legal Advocates for Respondent Nos. 1 and 2.

Mr. Hanumant D. Naik with Ms. P. Gaykar, Advocates for Respondent No. 3.

Mr. Pranay A. Kamat, Advocate for Respondent No. 5.

Mr. Pankaj Pai Vernekar with Ms. Nikita A. Sinai Nadkarni and Mr. B. Faterpekar, Advocates for Respondent No. 6.

WITH
WRIT PETITION NO. 828 OF 2023

1. Village Panchayat Calangute, Through its Sarpanch/ Secretary, Having office at, Calangute, Bardez —Goa.

2. Mr. Joseph Sequeira, Age 58 years, S/o Robert Sequeira, Presently Sarpanch of Village Panchayat Calangute, H. No. 196/E, Gaurawado, Calangute, Bardez-Goa. ... PETITIONERS

Versus

1. State of Goa, Through Chief Secretary, Having office at Secretariat, Porvorim, Bardez — Goa.

2. Goa Town and Country Planning Department, Through Chief Town Planner, Having office at 5th Floor, Kamat Towers, EDC Patto Plaza, Panaji — Goa.

3. Deputy Town Planner, Goa Town and Country Planning Department, having office at Administrative Building, Mapusa, Goa.

4. Goa Town and Country Planning Board, Through its Member Secretary, C/o Chief Town Planner, Having office at 5th Floor, Kamat Towers, EDC Patto Plaza, Panaji — Goa.

5. North Goa Planning and Development Authority, Through its Member Secretary, having office at Mala, Panaji-Goa. ... RESPONDENTS

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Mr. Pranay A. Kamat, Advocate for the Petitioners.

Mr. Shyam Mehta, Senior Advocate with Ms. Prachi Dhanani, Ms. Rohini Jaiswal, Mr. Raushan Kumar and Mr. Jayant Karn i/b Veritas Legal Advocates for Respondent Nos. 1 and 2.

Mr. Hanumant D. Naik with Ms. P. Gaykar, Advocates for Respondent No. 5.

CORAM: **BHARATI DANGRE &**
NIVEDITA P. MEHTA, JJ.

RESERVED ON: **8th MAY 2025**

PRONOUNCED ON: **23rd JUNE 2025**

JUDGMENT: (per BHARATI DANGRE, J.)

1. 'Goa Foundation', an Environment NGO based in Goa along with Petitioner No. 2, a resident of Candolim village, instituted Petition No. 30 of 2023 as a public interest litigation, being aggrieved by the circular dated 22.12.2022 issued by the Chief Town Planner (Planning), which perpetuated the zoning of plots attached to the Outline Development Plan (ODP) of Calangute-Candolim and Arpora-Nagoa-Parra villages, by claiming that they are no longer valid and has been issued without jurisdiction and in addition being contrary to the provisions of the Town and Country Planning Act, 1974 [hereinafter referred to as the 'TCP Act, 1974'].

Raising a doubt on the intent of the circular, which was neither notified in the gazette nor displayed on the TCP website, according to the Petitioners, amounted to a mischievous and colourful exercise of power and therefore, it was prayed to be quashed and set aside.

2. In addition, the PIL also raised a challenge to the several zoning certificates issued on the basis of the said circular and the Petitioners specifically contended that some certificates were issued even prior to the date of the circular itself, although and the

Petitioners do not have any information with regard to any developments on the plots, which are subject matter of the zoning certificates.

3. Adopting a strong stand that the impugned circular is a sordid tale of arbitrary and colourable exercise of powers resulting into changing the lucrative land uses in five villages, despite the withdrawal of these villages from the purview of the TCP Act, with an object of its commercialization, the Petition sought the following primary reliefs:-

> *"a) For a direction quashing and setting aside the impugned Circular dated 22.12.2022; bearing Ref. No. 35/1/TCP/443/2022/3462;*
>
> *b) For an order directing the Resp. authorities to cancel /withdraw the Zoning certificates issued under the circular dated 22.12.2022;*
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> *c) For an order directing the Resp. authorities to cancel/withdraw the Zoning certificates issued on the basis of the ODPs of Calangute-Candolim and Arpora-Nagoa-Parra, after the order of 16.12.2022 withdrawing the said ODPs was passed; but before the Circular dt. 22.12.2022 was issued;"*

4. During the pendency of the Petition, the Government promulgated an Ordinance to amend Section 19 of the TCP Act on 29.02.2024 and the Petition was permitted to be amended for raising a challenge to the Ordinance, by order dated 03.04.2024.

Thereafter, since an Executive Order was issued by the State Government on 22.08.2024, which was notified in the Official Gazette on 29.08.2024, the Petition was once again amended as per order dated 18.11.2024, raising a specific challenge to the same, on the ground that the power under Article 162 of the Constitution was not permitted to be exercised in the background facts and the prevailing legal position, as the exercise of executive power was justified only when no legal regime in form of a law made by the legislature or any provisions in the Constitution was governing the field.

5. The PIL Petition No. 30 of 2023 also raise a challenge to the revised ODPs for Calangute-Candolim and Arpora-Nagoa-Parra villages notified on 13.12.2022 as it continued many of the tainted zones in the earlier ODP, which enhanced the intensity of development proposals and even added new areas of development, the ODPs coming into force on 15.12.2022.

In consonance with the main reliefs in the Petitions, various interim reliefs are also sought.

6. On 14.02.2024, 'Rule' was issued in the Petition and pending the hearing and final disposal, interim relief was granted staying the effect and operation of circular dated 22.12.2022, restraining the Respondents from granting conversion sanads

based on the certificates issued by the TCP Department in the five villages without verifying the plot zone status in RP-2021.

Further on 02.05.2024, pending the hearing of the Petition, the operation of December ODPs was stayed and the Petition was directed to be listed for final hearing.

7. Along with the aforesaid PIL Writ Petition No. 30 of 2023, connected Writ Petition No. 24 of 2023 filed by the Calangute Constituency Forum as well as Writ Petition No. 828 of 2023 filed by the Village Panchayat of Calangute are also tagged, as it involves a similar challenge, calling in question the action of the Respondents/State Authorities, being detrimental to the public interest and intended to disturb the environment and sanctity of the villages, which comprise of eco-sensitive areas.

By order dated 20.02.2024, the two Petitions were directed to be tagged along with PIL Writ Petition No. 30 of 2023.

On the pleadings being completed, in terms of the directions of the Apex Court dated 15.07.2024, at the request of the parties and their Counsel, we have taken the Petitions for final hearing.

8. We have heard learned Senior Counsel Ms. Norma Alvares for the Petitioners in PIL Writ Petition No. 30 of 2023, Mr. Rohit Bras De Sa in PIL Writ Petition No. 24 of 2023 and Mr. Pranay Kamat representing the Petitioner-Village Panchayat of Calangute in Writ Petition No. 828 of 2023, who has approached this Court

through its Sarpanch/Secretary, constituted as per Articles 243-A to 243-N of the Constitution of India and the Goa Panchayat Raj Act, 1994, as a local/constitutional authority, in the wake of 73rd and 74th amendment to the Constitution of India, as all the Petitioners are aggrieved by the action of the Respondents in encouraging and promoting development over the fragile eco-sensitive zones in the RP-2021 raising a similar grievance.

We have also heard Mr. Shyam Mehta, learned Senior Counsel representing the State and the TCP Department, learned Counsel Mr. Hanumant D. Naik for the NGPDA, Mr. Pankaj Pai Vernekar for Respondent No. 6 in PIL WP Nos. 30 and 24 of 2023 and Mr. Jagannath Mulgaonkar representing Respondent No. 7 in PIL WP No. 30 of 2023.

9. Ms. Alvares for Goa Foundation would urge that the Petitioners are concerned about the protection of the eco-sensitive zones and the Petition is filed in public interest after conducting adequate research in the matter, with an aim to protect the eco-sensitive zones in the two ODPs covering five villages namely, Calangute, Candolim, Arpora, Nagoa and Parra, located in North Goa District. Highlighting that neither Petitioner No. 1 nor Petitioner No. 2 have any personal interest in the matter, she submit the reliefs in the PIL are claimed in the backdrop of the statutory scheme governing State of Goa.

The Town and Country Planning Act, 1974, according to Ms. Alvares, provide for planning the development and the use of rural and urban land in the State and she would submit that it was made applicable to the whole State of Goa on its enactment and remains in force as on date.

Ms. Alvares would canvass her argument into two different compartments; the first being the challenge raised in the Petition to the action of the Government in issuing circular dated 22.12.2022 as well as the Executive Order dated 22.08.2024, which according to her, is an arbitrary exercise of power by the Authority to nudge down the statutory effect, pursuant to the planning areas once declared under the scheme having ceased to be so. Her second limb of challenge is to the December ODPs which came into effect from 15.12.2022 as according to her, they defied the Regional Plan and diminished the eco-sensitive zones therein in favour of development. She has however fairly submitted before us that in case the Court is satisfied with her argument in the first rung, she may not be required to adjudicate her claim in regards to the illegalities of the ODP.

10. Narrating the sequence of events, Ms. Alvares has submitted that the Petition involves five villages located in the North Goa District which are covered by the two Outline Development Plans (ODPs); the first being for Calangute-Candolim villages and the second for Arpora-Nagoa-Parra villages. She would submit that

these villages were notified as Planning Areas somewhere in the year 2015-2017 and therefore, placed under the jurisdiction of the North Goa Planning and Development Authority [hereinafter referred to as "NGPDA"]. Upon being declared as Planning Areas, the NGPDA prepared the ODPs to govern their developments, which were approved by the Government and duly notified as per the procedure prescribed under the TCP Act.

11. In April 2022, noticing that the ODPs covered arbitrary zoning to suit private interest and that the zoning proposals in the ODP were at variance with the Regional Plan (RP-2021) and specifically the eco-zones as the ODPs removed the protection which they deserved and permitted development of these lands contrary to the land Rules in RP-2021, which would adversely impact the State's ecology and environment, the Chief Town Planner on behalf of the Government of Goa issued a notification under Section 40 of the TCP Act, 1974, as the Government was satisfied that a grave emergency existed, which necessitated suspension of certain ODPs for a period of 60 days.

On 28.04.2022, the notification was published in the Official Gazette in the name of the Governor of Goa, expressing the satisfaction that grave emergency existed, which necessitated suspension of certain ODP for a period of 60 days and this included the ODP for Calangute-Candolim Planning Area 2025 and the ODP for Arpora-Nagoa-Parra Planning Area 2030.

Further, in exercise of powers conferred by sub-section (1) of Section 132 of the TCP Act, the notification directed that the ODP's shall be reviewed and examined in detail by a Committee constituted under the Chairmanship of the Chief Town Planner (Planning) with the Senior Town Planner (North) as its Convenor and comprising of several members.

Upon suspension of the ODPs, it was also directed that the Regional Plan Goa-2021 shall be applicable to the planning areas under the ODP until further orders of the Government and the Committee was directed to submit its report within 60 days from the date of the issuance of the notification.

12. The Review Committee constituted vide the aforesaid notification, identified approximately 775 survey numbers whose zone changes were found contrary to the RP and it recommended that they shall be returned to the zoning in the RP, out of these 401 survey numbers comprising 985 sub-divisions, were the eco-sensitive zones and the present Petition involves these zones. In the various meetings of the Review Committee, which are placed before us as a part of the report dated 25.07.2022 tabled in the Goa Legislative Assembly, the Committee expressed a clear view that during the preparation of the ODPs, no major planning exercise in detail was undertaken and the change of zone was affected arbitrarily, without following any uniform policy. It was also noticed by the Committee that tenanted paddy fields, eco-

sensitive areas were changed to developable/settlement zones which could possibly result in litigation.

13. The recommendations of the Review Committee were accepted by the Town and Country Planning Board (TCP Board) and the Government.

On 12.08.2022, a fresh notification was published by the Department of the Town and Country Planning upon receipt of the report of the Review Committee examining the ODPs and as the report had unveiled the various illegalities having being committed in the preparation of ODPs, and the findings of the Review Committee having been accepted by the Planning Board as well as the Government, once again, a grave emergency was perceived, necessitating part suspension of the ODPs, setting out the extent of the land/area situated within the limits of the respective Planning Areas and the notification inviting persons to submit their objections to the said proposal in writing being addressed to the Chief Town Planner (Planning), so as to take them in consideration before arriving a final decision on the said proposal.

14. According to Ms. Alvares, upon issuance of the said notification, the political equations underwent a change and so with it, changed the perception of the Government as regards to

"grave emergency" which was noticed in the ODPs earlier presented.

According to her, much prior to the termination of 60 days period for receiving objections, the Committee not only examined the objections but also recommended zone changes, where no objections have been received in its signed and undated report.

Further, on 14.10.2022, the TCP Board considered all the survey numbers/plots and zoning, the Committee report and added several new zone changes in its zones, which were not part of its earlier notification dated 12.08.2022 and submitted revised ODPs to the Government for approval.

According to Ms. Alvares between this meeting and the date of notification of the December ODPs, approximately 143 new zone changes were added without following the statutory provision and this was followed by notifying two revised ODPs on 13.12.2022 by the State Government by publishing it in its Official Gazette dated 15.12.2022. The notifications were issued in exercise of the powers conferred by sub-section (1) of Section 37 of the TCP Act as the NGPDA notified the ODPs to come into operation under sub-section (3) of Section 37 of the TCP Act in form of ODPs for; (a) Calangute-Candolim Planning Areas 2025 and (b) Arpora-Nagoa-Parra Planning Areas 2030.

The ODPs were made subject to the provisions of the Goa Land Development and Building Construction Regulations, 2010

as amended from time to time. The notifications published came into effect from 15.12.2022.

15. A major development occurred on the next day, when the State Government published a notification withdrawing Calangute-Candolim and Arpora-Nagoa-Parra as planning areas by invoking sub-section (1) of Section 19 of the TCP Act resulting into consequences flowing from sub-section (2) of Section 19 and according to Ms. Alvares, the ODPs notified for these villages also cease to apply.

16. Despite the specific statutory provisions providing consequence of withdrawal of the Planning Areas as prescribed in the TCP Act, and as a cover up, according to the learned Senior Counsel, a circular dated 22.12.2022 was issued by the Chief Town Planner directing that the NGPDA had no jurisdiction over the five villages and the TCP Department which was responsible for issuing technical clearances for construction/sub-division (developments), zoning etc. shall follow the approved ODP of Calangute-Candolim and Arpora-Nagoa-Parra i.e. the December ODPs.

It is the specific grievance of the Petitioners that this circular was not notified, but was merely circulated within town planning areas, to the Collector, the Registrar etc.

It is this circular which is challenged in this Petition.

17. In the wake of the aforesaid, from the date of withdrawal of the five villages as planning areas, 745 zoning certificates reflecting status as per the December ODPs were issued and it is a contention raised in the Petition that it facilitated sale of lands and conversion sanads, technical clearances issued by the TCP Department and issuance of construction licenses.

This constrained the Petitioners to institute the PIL on 29.08.2023 raising a challenge to the circular dated 22.12.2022 as being destructive of the State's ecology and it is specifically averred by Ms. Alvares that despite the circular being issued in 2022 since it was not within the knowledge of the Petitioners, the Petition was filed only in August 2023.

18. On 14.02.2022, the Division Bench of the High Court, by a reasoned order stayed the operation of the impugned circular and also restrained the Respondents Authorities from issuing any further zoning certificates and conversion sanads based on the certificates issued by the TCP Department in the five villages.

19. The Petitions have specifically pleaded that in order to overcome the effect of the order passed by the Court, within two weeks and to be specific on 29.02.2024, the Government promulgated an Ordinance to amend Section 19 and insert sub-clause (3), which in substance stated that even if the Planning Area was withdrawn, the existing ODP would continue to operate

till the area is declared as a Planning Area once again, at which time the RP shall become applicable. The Ordinance also included a validation clause that attempted to nullify the order of the High Court, which is the specific argument of Ms. Alvares.

On a challenge being raised to the Ordinance as well as the December ODPs, on 02.05.2024, the Division Bench clearly expressed that the December ODPs were *prima facie* vitiated by non-application of mind, unreasonableness and manifest arbitrariness and these ODPs were even more drastic than the earlier ones, which were found to be unsustainable by the Government. The Court directed that the operation of the December ODPs shall remain stayed and no further permissions shall be granted and all constructions in the five villages will be only on the basis of the RP zoning as directed by its earlier order dated 14.02.2024.

20. The Government appealed against the said order and the Apex Court on 21.05.2024 stayed the order of the High Court and clarified that any constructions made pursuant to the impugned circular would be subject to pending Writ Petition before the High Court.

The Petitioner moved an Application for modification of the order, when the Apex Court on 15.07.2024 ordered that the pending matter shall be decided by the High Court and the

pleadings were directed to be completed while it directed maintenance of the present position.

21. In the sequence of the events, it is pointed out to us that the Ordinance promulgated did not pass the muster with the Legislative Assembly and it lapsed by efflux of time.

However, on 22.08.2024, the Government once again sprung into action when it issued an Executive Order purportedly by invoking Article 162 of the Constitution of India, to enable continuance of the operation of the impugned ODPs and in fact, both the Executive Orders, according to Ms. Alvares, gave an impression that it applies to the whole of Goa, in fact on 16.12.2022, only five villages were withdrawn from the Planning Areas and practically the Executive Order therefore, only governed the five villages, and issuance of the order even took away the remedy of filing an Appeal under Section 38 of the TCP Act, 1974 to the District Court.

22. In the wake of the aforesaid events, the Petitioners amended the Petition to incorporate the challenge to the Executive Order by submitting that it was issued with an oblique motive of filling up the gap and Ms. Alvares has specifically contended that since the power is not available to an Authority to legislate on a subject, then by way of executive instructions, it cannot fill in the gap.

An Application was moved by the Petitioners, seeking a stay of the operation of the Executive Order and on 23.01.2025, the Court directed that in consonance with the directions issued by the Supreme Court, the Respondents shall maintain the position in the concerned areas and no construction activity would be carried out after 15.07.2024. Once again, the Apex Court was approached being aggrieved by the said order, which refused to show any indulgence.

23. It is in the aforesaid background facts, Ms. Alvares raised a challenge to the Executive Order dated 22.08.2024 (published on 29.08.2024) as it is her primary contention that the order issued, is *dehors* the scope of Article 162 of the Constitution of India, as there exist provisions in the TCP Act, 1974 governing the field and therefore, it is not open to issue the impugned Executive Order. A challenge is also raised to the said order on the ground that it directly contradicts the statutory provision.

According to her, the Executive Order, though paraphrased in general terms, is applicable to the ODPs across the entire State, the date from which it has been brought into force makes it obvious that it is essentially to save the two ODPs of the five villages. While mounting her attack on the Executive Order, she would submit that it is nothing but reiteration of the resolve of the Government displayed in the circular issued on 22.12.2022 and the subsequent Ordinance to the effect that the December ODPs

must continue to govern the planning and development in the five villages indefinitely in accordance with the impugned ODPs in absence of any provision to that effect in the TCP Act.

Being extremely critical of the approach of the State Government, she would submit that Article 162 of the Constitution of India provides for extension of executive power to the matters in respect of which the legislature of the State has power to make laws and this being the express understanding, once a law occupies a field, it will not be open to the State Government to fill in the gap by issuing an order as it is implicit, that when a statute exits or the Rules in exercise of statutory powers are framed, the executive must abide by the same and it is not open for it to invoke Article 162 of the Constitution, in ignorance of such statute or Rules/Regulations.

She would place reliance on **P.H. Paul Vs. P. Veldurai**[1] and also the decision in the case of **Indian School Vs. State of Rajasthan**[2].

24. According to Ms. Alvares the preface to the Executive Order states that it has been necessitated as there is no statutory framework for regulating the Planning and Development in the withdrawn planning areas, to which the TCP Act, 1974, no longer applied and therefore, it is in the public interest, to ensure its

1 (2011) 5 SCC 214

2 (2021) 10 SCC 517

continued regulation and orderly development until new statutory provisions are enacted or the situation is otherwise addressed. She would submit before us that once the five villages stand withdrawn from the planning areas, the ODPs governing these planning areas shall cease to operate and it must revert back to the Regional Plan and therefore, the continued application of the ODPs to them is nothing but a malafide attempt to operate the December ODPs which are filled with deficiencies as they contradict the Regional Plan.

In support of her submissions, she has taken us through the entire scheme of the TCP Act, which has categorized the whole State as a non-planning area out of which the planning areas are carved out in terms of Section 18 of the Act and thereupon, the provisions of the Act are made applicable to such areas. Further, as per Section 19(2), when the Government in exercise of its power withdraw the Planning area from the operation of the Act, according to her, it convey that the provisions in the TCP Act pertaining to the planning areas will no longer apply to the said area, which shall result into it being returned to the non-planning area governed by the RP. She has specifically contended before us that the entire State of Goa to which the TCP Act and Regional Plan apply may be termed as a 'non-planning area' from which the 'planning areas' are selected and are declared to be so and then governed by the Development Plan formulated by the PDA to be approved by the Government. However, once their status as

Planning Areas is withdrawn, the areas return to their previous status of 'non-planning area', which is governed by the RP, for which the TCP Department is empowered to issue technical clearance/NOC for development, which will be followed by issuance of construction license.

25. In no uncertain terms, it is the submission of Ms. Alvares that though it is not anywhere specifically provided in the TCP Act or the Regulation, one thing is clear that development must be in conformity with the relevant Acts, Rules, Regulations and the appropriate plan in force and the developments must therefore conform with the RP which is formulated for the entire region, a larger area and any ODP must as far as possible, be in conformity with the RP. She has specifically refuted the claim of the State which is reflected in its affidavit in reply when it has interpreted Section 19(1) of the TCP Act to mean that the TCP Act itself no longer applies to the withdrawn Planning Areas, but in such a contingency her submission is, the area would be first required to be brought within the purview of the Act of 1974 by notifying it under sub-section(2) of Section 1 of the TCP Act to make the Act applicable to it, before it is declared as a Planning Area and such a notification would be required for the RP to be made applicable to it and without such a notification even the Country and Town Planning Department has no jurisdiction over such areas as, the TCP Board and Authorities are creatures of the Act and if the Act

itself is not applicable, then even the Board cannot exercise its control.

26. In short, the question that is formulated for consideration by Ms. Alvares is the proper interpretation of the word, "this Act" in Section 18 and in Section 19 of the TCP Act, 1974 and according to her, a meaningful and purposive interpretation will have to be adopted, as never was it the intention of the legislation to wipe out the effect of the whole Act, when an area ceased to be a Planning Area. According to her, the correct and rational reading of Section 18 along with Section 19 would exclude the applicability of the provisions in the Act of 1974, as regards the planning area and the Planning and Development Authority.

Ms. Alvares has also advanced her submissions on the validity of the December ODPs as it is her specific stand that they were formulated and notified without following the statutory procedures. She has once again taken us to the provisions of the TCP Act, which contemplate a procedure to be followed when the ODPs are modified and she would submit that since serious lapses were found in the original ODPs, they were sought to be rectified, but remained uncorrected in December OPDs. Not only that, according to her, 142 new plot-based zone changes were surreptitiously inserted into the ODPs, despite the fact that the views of the public were invited, but without waiting for the same, a unilateral decision has been taken by the Government. In

addition, it is her submission that at any time after the notification of an ODP, if the PDA is of the view that an alteration therein is required, it must then prepare a plan under Section 39 to submit the report and all this while, it will follow the process laid down in Sections 34 to 37. But it is her contention that the Government has deviated totally from the procedure and this has cast a shadow of legal infirmity on the subsequent actions of the Government, resulting in the issuance of circular, the Ordinance and the Executive Order, all attempts made to protect the December ODPs, which suffered from gross malice and illegality.

She has placed before us a detailed chart establishing the procedural flaws in the preparation of the ODPs with the background of the procedure contemplated under Sections 34 to 37 of the TCP Act.

27. Ms. Alvares has also raised a specific question and asked for placing relevant data as to how many objections did the Government receive and also as to on what grounds the objections received were rejected, as it is her specific contention that many of the recommendations of the sub-committee were rejected by the TCP Board in its meeting dated 14.10.2022 and not only these, the Board approved 142 new zone changes in survey numbers which were not included in the notification dated 12.08.2022 nor were they placed before the sub-committee. She has also produced before us a chart emphasizing her point to submit that the

procedure carried out was unilateral without adherence to the statutory scheme and she has sought an explanation from the State Government in indulging into such a mechanism while withdrawing the planning areas immediately after issuance of December ODPs, which has even denied a statutory right of Appeal against the ODP notified on 22.12.2022.

28. The long and short of the submission of Ms. Alvares is that the December ODPs failed to follow the statutory procedure as set out in the TCP Act of 1974 and failed to remove the colourable changes made in the original notification of 2018/2021 which has compromised the eco-zones, which ought to have been given its due weightage and therefore, it is her specific contention that the action on the part of the State Government and its Agencies must be viewed with all sincerity for protection of the eco-sensitive zones which are attempted to be converted into settlement zones only with an object of commercializing the land in Goa. It is her vehement submission that the zoning contemplated in the revised ODPs is in conflict with the RP-2021.

29. PIL Writ Petition No. 24 of 2023 filed by the Calangute Constituency Forum, also raises a somewhat similar grievance by highlighting the crucial role played by the ODP in town planning by providing for a strategic direction for land use allocation, infrastructural planning, environmental considerations etc.

Mr. Rohit Bras De Sa, representing the Petitioner has adopted the arguments advanced by the learned Senior Counsel Ms. Alvares. In his submission, that several deliberate and intentional illegalities have been committed in re-notifying the ODP Planning 2025 for planning areas of Calangute-Candolim, particularly, as he would submit that there is no accessibility of given roads in the ODPs and what is shown and depicted as road is bogus and imaginary as factually, there is no 15 metres wide road available or 10 metres road as per the ODP, based on which several permissions were granted. It is his specific contention that ignoring the objections raised, the ODPs were finalized at the whims and fancies of those in whose hands the affairs were vested and the procedures envisaged under Section 29 of the TCP Act were completely trampled upon and therefore, the draft ODP 2025 of village Calangute-Candolim is illegal, bad in law and perverse and is liable to be quashed and set aside.

30. A significant point that Mr. De Sa has raised in support of his challenge to the modified ODP of village Calangute and also the further procedure is the constitutional infraction.

By inviting our attention to the scheme contained in the TCP Act and in particular, Chapter-VI “Preparation of Development Plans”, he would submit that the power conferred on the PDA, as constituted under the Act, is nothing but assumption of the power, which ought to have been vested in the Panchayat in the wake of

the 73rd amendment introduced w.e.f. 21.04.1993 establishing Panchayats in every State, being at the village, intermediate and district levels as institutions of self-governance constituted under Article 243-B of the Constitution of India. According to him, Article 243-G included in part IX of the Constitution of India, empowers the legislature of the State to endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and this would include, subject to such conditions as may be specified, with respect to the preparation of plans for economic development and social justice as well as for implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the eleventh schedule.

31. By inviting our attention to Article 243-N of the Constitution of India, Mr. De Sa would submit that any provision of any law relating to the Panchayats in force in a State immediately before the commencement of the Constitution (73rd amendment) Act, 1992, which is inconsistent with the provisions of this part, shall continue to be in force until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

He would invite our attention to Article 243-ZD which has prescribed a Committee for district planning in every State at the district level as a District Planning Committee, to consolidate the plans prepared by the Panchayats and the Municipalities in the district and to prepare a draft development plan for the district as a whole. The legislature of the State, according to him, has made provisions with respect to the composition of the District Planning Committees and every District Planning Committee shall prepare the draft development plan with regard to various aspects like the matters of common interest between the Panchayats and the Municipalities including planning, sharing of water and other physical and natural resources, environmental conservation etc.

By inviting our attention to the Goa Panchayat Raj Act, 1994, which was brought into force to establish a two-tier Panchayat Raj system in the State with elected representatives at the village and district level, he would invite our attention to Section 238 which deals with preparation of development plan by prescribing that every Panchayat shall prepare every year a development plan and submit it to the Zilla Panchayat and every Zilla Panchayat shall prepare every year, a development plan of the district after including the development plans of Panchayats and submit it to the 'District Planning Committee' constituted under Section 239.

32. Section 239 is invoked by Mr. De Sa to submit that it is imperative for the Government to constitute in every district, a Planning Committee to consolidate the plans prepared by the Zilla Panchayat, Panchayats, and Municipal Councils in the district as a whole and every District Planning Committee, shall in preparing the draft development plan, have regard to the matters of common interest in the District including planning, sharing of water and other physical and natural resources, environmental conservation etc. and also the extent and type of available resources, financial or otherwise.

33. According to Mr. De Sa, the planning is, therefore, the function of the Panchayat which shall prepare the draft plan and shall receive approval from the Government as the Panchayat is better suited to understand the requirements of the smaller area in the state. He would submit that every PDA, which is entrusted the function of preparation of ODP, undisputedly, for this very reason, has to consult the concerned local authority or the authorities as the plan shall be prepared not later than one year from the date of its constitution of the planning for the planning area within its jurisdiction and submit it to the Government, through the Board, for provisional approval. Drawing a clue from Section 29, he would submit that if the NGPDA is appointed as a Planning and Development Agency, it was very much necessary to consult the "local authority" defined in Section 2(18) to mean that a Municipal

Council or a Village Panchayat and if there is failure to do so then definitely, it can be said that the rights of the Panchayats are run down. Section 29 of the TCP Act, according to Mr. De Sa contemplates "consultation with the concerned local authority" and this consultation is a clear violation of the scheme of the Panchayat Raj as introduced by the 73rd amendment of the Constitution as the Panchayat being introduced as self-government at the grassroots level. According to him, the local needs can be best assessed by the locals and not by some statutory body constituted at the State level, which may not feel the pulse of the people occupying the areas within the jurisdiction of the Panchayat. Therefore, it is the submission of Mr. De Sa that the scheme of Chapter IV, which has conferred the power upon the Planning and Development Authority to prepare an OPD/ comprehensive development plan, is *dehors* the scheme as contemplated in Part IX of the Constitution of India.

He would rely upon the decision of this Court in the case of **Charan Sovinda Waghmare Vs. State of Maharashtra & Others**[3], which involved facts disclosing that the Guardian Minister had approved certain works, which were substituted and on a challenge being raised by the Chairman of Zilla Panchayat that it amounted to encroachment on the powers of the Zilla Panchayat, it was held that constitutional provisions of Articles 243-B, 243-ZD, nowhere shows the intention of the parliament to

3 2012(4) Bom.C.R. 40

deprive the Panchayats or the Municipalities of their powers as institution of self-government and when neither the Panchayat Samiti under Zilla Parishad Act or Panchayat under Bombay Village Panchayats Act is recognized as a planning authority, the Respondents had avoided to honour their duty to democracy. He has also placed reliance upon the decision of the Apex Court in the case of **Rajendra Shankar Shukla & Others Vs. State of Chhattisgarh & Others**[4], which also focused its attention on part IX-A of the Constitution of India and in the peculiar facts the District Planning Committee, constituted under Section 3 of the Chhattisgarh Zila Yojna Samiti Act, 1995, with an intention to democratize the town planning process and with the introduction of Article 243-ZD directing setting up the DPC to consolidate the plans prepared by the Panchayats and Municipalities and to prepare a draft development plan for the district as a whole, held that after insertion of Part IX-A in the Constitution, the development plan for the district can only be formed by the democratically elected representative by the DPC, by taking into account the factors mentioned in the relevant clauses of Article 243-B and such plans shall be forwarded to the Government of State for consideration.

34. Mr. De Sa is critical in his submission when he submits that the December ODPs are nothing but old wine in a new bottle and

4 (2015) 10 SCC 400

according to him though the order dated 04.05.2022 records that the Court shall give hearing, this was not done.

He has cited before us various instances by submitting that in certain places the GCZMA plan shows sand dunes whereas the ODP has shown contrast users i.e. the Development zone. He submits that it was necessary that planning was definitely required to urbanize the land users and not acting randomly so that the whole planning becomes a confusing affair.

35. Mr. Kamat representing the Village Panchayat of Calangute in Writ Petition No. 828 of 2023, is aggrieved by the action of NGPDA in not affording an opportunity of hearing to the Panchayat. According to him, even the Government did not grant any hearing to the Village Panchayat and he would therefore, seek a relief of declaring the exercise of preparing draft, final and revised ODP 2025 for Calangute-Candolim under the notifications dated 23.11.2016, 13.02.2018, 28.11.2018 and 12.08.2022 to be illegal and against the provisions of Article 243-G, 243-N of the Constitution of India. A declaration is also sought in the Petition to the effect that the provisions of the TCP Act relating to planning including Sections 9 to 38, being contrary and inconsistent with Articles 243-G and 243-N of the Constitution of India, be declared as illegal.

36. Mr. Kamat has adopted the arguments of Ms. Alvares and Mr. De Sa in assailing the impugned notifications. It is his specific contention that in view of the 73rd and 74th amendment to the Constitution, after the Goa Panchayat Raj Act, 1994 was enacted by the Village Panchayat Resolutions, 1962, the Panchayats received a notification of the constitution of Authorities for planning in Panchayat areas, however, it is his grievance that the Government of Goa has not allowed the Panchayat to make its development plan and has imposed Calangute-Candolim ODP, which is prepared without following the provisions of TCP Act and the procedure prescribed. He would therefore request for grant of reliefs as sought in the Petition.

37. The Respondent-State is represented by the learned Senior Counsel Mr. Shyam Mehta, who would rely upon the same sequence of events, which were placed before us by Ms. Alvares, the learned Senior Counsel for the Petitioners in PIL Writ Petition No. 30 of 2023, as he would submit that there is no dispute as regards the dates and occurrences of events. According to him, the three ODPs were suspended by the Government by invoking the emergency ground and a Review Committee was appointed, which submitted its report. According to him, the recommendations of the Review Committee were broad-based and he dispute the contention of Ms. Alvares that the recommendations of the Review Committee are binding.

38. Mr. Mehta has taken us through the chart, which is annexed with the rejoinder filed by Ms. Alvares with regards to the five villages and according to him, the chart would reflect that in a large number of cases in these five villages, the plots have been reverted to RP-2021 and in some cases, they have been partly reverted. It is his specific submission that the State Government has accorded due regard to the recommendations of the Review Committee, though it has not accepted its report in its entirety.

According to Mr. Mehta, the Petitioners themselves have admitted that out of 165 cases in Arpora village, which were scrutinised by the Review Committee, 55.75% have been reverted to RP-2021 and in 20 cases, new zones were added in 2022 ODP, whereas in Nagoa village 41% cases have been reverted to RP-2021 whereas 21.3% have been partly reverted. In Parra village where 164 cases were subject to scrutiny, 48.7% have been reverted to RP-2021, whereas in Calangute, out of 367 cases, in 58 cases, there has been a reversion to RP-2021 and in Candolim, 36.55% cases were reverted to RP-2021 out of 93 cases. He would therefore submit that each village was considered separately and the State did not reject the recommendations of the Committee totally, but in excess of 75% cases, it was accepted. He would submit that the new zones were not before the Authority and according to him, for retention of zones in the December ODPs, several factors have contributed and this includes; (i) past commitment, (ii) zone change from A1 to A2 and vice-versa, (iii) removal/addition of

CADA area, (iv) inclusion/removal/change in width of roads shown in December ODPs.

39. According to Mr. Mehta, in cases where there were conversion sanads issued in the past, the Government has deemed it appropriate not to re-open the cases and as the Petitioners have failed to demonstrate that the conversion sanads were either wrongly issued and further zone changes were done on the basis of the recommendation of the sub-committee on the basis of past commitment and therefore, they deserve to be honoured. Considering the grievance of the Petitioners that in many instances, the natural cover zone has been converted into an orchard in 2018 and 2020 ODPs and the same was retained in the December 2022 ODP, he has invited our attention to 'Natural Cover Zone' under RP-2021 to include vegetated areas, the probable private forest areas which are to be surveyed, which may cover cashew plantations, general tree cover, social forestry, areas of kulagar or other green cover. According to him, this zone is introduced by carving out areas from existing orchard zones in order to protect maximum green cover from development pressures and this zone is classified as Eco-II and if and when the Forest Department surveys and identifies the areas as 'Forest', under the Forest Conservation Act, these areas will be marked as 'Private Forest' and treated as Eco-I and the development permissible within these lands are as per the orchard zone as

under the Goa (Regulation of Land Development and Building Construction) Act, 2008, natural covers and orchard are covered within the same category i.e. A1 and A2 and similar nature of activities is permitted in both zones.

40. Dealing with one more aspect of removal/addition of CADA area, Mr. Mehta would submit that the zone of these survey numbers has been reverted to zoning as per the RP-2021 with slight variation with regard to CADA status and in this regard, he would submit that during the preparation of the 2020 ODPs for the villages of Arpora, Nagoa, Parra areas under CADA were zoned on the basis of the information supplied by the Water Resources Department (WRD) to North Goa PDA vide letter no. WRD/WD VIII/PB/F.10/2020-21/244 dated 08.07.2020 and as per the plan submitted by the WRD (which identified those areas which are under command area and those which are not). Further, according to him, it was observed that the settlement areas were already existing in many areas shown as command areas by WRD. In view of the same, it was decided that; (a) wherever there were existing structures on site, they were retained as habitable areas and (b) the rest of the area marked as command area by WRD was to be shown as 'Paddy Field', which itself meant as command areas as the use/zone of the property was retained as paddy field.

41. To the fault pointed out by the Petitioners that new roads have been indicated in December ODPs or the roads proposed in RP-2021 were not reflected in December ODPs or the width of the roads have been varied from what is depicted in RP-2021, he would submit that the land use of these survey numbers has been reverted to the zoning as per RP-2021, however, new roads had to be introduced in the ODPs or roads as proposed in RP-2021 have been removed or as per the necessity, the width of the roads was required to be changed and therefore, there were minor changes required to be carried out in the ODPs and they do not find strictly conforming to RP-2021.

In any case, it is his submission that the Regional Plan is a broad-based plan and during its preparation, only major roads were shown which have been identified by the Committee. The ODP is a detailed land use plan which reflects a detailed road network and during its preparation, existing road networks were identified on site by an external agency and based on the data retrieved, new roads as existing on site were incorporated in the ODP.

42. According to Mr. Mehta, the Committee referred to 906 Eco-2 zones, which suffer from lacuna and therefore, they were recommended to be reverted to RP-2021. Thereafter, the Government invited suggestions and even partly accepted the recommendations. In any case, it is the submission of Mr. Mehta

that the Petitioners are only concerned with Eco-2 zones, but have not raised any objections as regards the other cases, which do not comply with RP-2021.

Mr. Mehta would categorically submit before us that in any case he does not desire to go into the merits of each of the cases of five villages as this Court does not possess the expertise to deal with the same and since the Petitioners have not referred to each and every case, the Court may not examine it with a microscopic scrutiny.

43. Dealing with the contention of Ms. Alvares, revolving around Section 19(1) of the TCP Act, 1974 and her specific contention as regards the effect of withdrawal of whole or part of any planning area from the operation of the Act and consequences provided under sub-section (2) to follow, he would place reliance on the decision of the Division Bench of this Court in the case of **Benaulim Civil & Social Forum, through its Member Mr. Jose Rodrigues & 6 Others Vs. The State of Goa, through the Chief Secretary & 6 Others**[5], to submit that SLP filed against the said decision was dismissed by the Apex Court on 01.07.2014, thereby confirming the verdict of the Division Bench. Reliance is also placed by him on the recent decision of the Division Bench of this Court in the case of **The Goa Foundation**

5 PIL WP No. 17/2013 decided on 17.12.2013

& Others Vs. The State of Goa and Others[6], where it decided the validity of Section 17(2) of the Act.

It is his specific contention that when a statute is to be read, it has to be read by keeping in mind the intention of the legislature and according to him, if the Act of 1974 is to be read in the manner in which the Petitioners want the Court to read it, it would be causing violence to the statute. In any case, it is his further submission that when the provisions of the Act cease to apply, there can be no vacuum and in such a contingency, the State Government would derive power under Article 162 of the Constitution and fill in the gap to an executive fiat. He would place reliance upon the decision in the case of **Bishambhar Dayal Chandra Mohan & Others Vs. State of Uttar Pradesh & Others**[7], where the Apex Court has categorically held that the executive power of a State is coextensive with the legislative power with an embargo that no executive action can interfere with the rights of the citizen unless backed by an existing statutory provision. Availing this power, according to him, the State Government issued a notification which is merely a stop-gap arrangement, which operate for a limited period since the field is not governed by any statutory provision.

By inviting our attention to the Goa Land Development and Building Construction Regulation, 2010, it is the submission of

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6 PIL WP No. 16/2023 decided on 13.03.2025

7 (1982) 1 SCC 39

Mr. Mehta that the Regulations of 2010 is also applicable to the Development Plan of withdrawn notified areas and it clearly contemplate that the ODPs/Comprehensive Development Plans as notified/to be notified for existing planning areas declared under Section 18 of the TCP Act, 1974 shall govern the developments therein. He would specifically focus his attention on clause (c) of Regulation 6.1.1, which is applicable in the respective zones and specifically with regards to the ODPs of withdrawn planning areas/zoning plans. Thus, according to him, the Regulation of 2010 applies even to the areas which are withdrawn from the planning areas and despite the removal of the ODPs, they would be still governed by the Regulations of 2010. By relying upon Regulation 6A.4, in its applicability to various zones, he would submit that it clearly contemplate that all areas outside ODP (Outline Development Plan) shall conform to the classification of the settlement as approved in the final notified Regional Plan and therefore, according to him the Regulations of 2010 even apply to the ODP areas.

44. According to Mr. Mehta, the argument of Ms. Alvares that ODP must conform to the Regional Plan is not correct in its entirety as Section 33 provides the power to the Government to prepare the Development Plan, who may authorise the Chief Town Planner to prepare such plan, which shall be submitted to the Board and the Board shall follow such procedure in respect of the

plan so prepared and exercise such powers as the Planning Development Authority would follow or exercise in respect of the Development Plan prepared. According to him, the ODP shall conform to the Development Plan "as far as may be" and in fact, on the recommendation of the Review Committee, several of the plots have been directed to be in conformity with the Regional Plan and therefore, the Petitioners can have no objection in this regard.

Mr. Mehta by inviting our attention to the scheme contained in Chapter VI as regards to the preparation of the Development Plan, its contents and alteration of the Development Plan and making of minor changes, would submit that the provisions of Sections 34 to 38 shall as far as may be, apply to the Development Plan submitted under sub-section (1) of Section 39 and it expects the PDA to carry out the survey and thereafter, prepare the plan to submit it to the Government and Board for alteration and this according to him, is the power of the Planning and Development Authority, to act in consultation with the local Authorities and not the power of the State Government to be exercised suo motu. In this case, according to him, since the PDA did not prepare the plan, there is no question of invocation of Sections 33 and 39 as if the State decides to go via route 33, then it will have to be completely followed including any modifications therein.

45. According to Mr. Mehta, there is no violation of Section 35 in the present case as alleged, as Regional Plan is available and there was already an ODP sanctioned. It is submitted that the only question remains as to what stands reverted and what is not. He would submit that all the objections that were raised, pursuant to the objections being invited are purely technical in nature and none of them allege manifest arbitrariness. In any case, the Town Planner was part of the whole process from time to time when the Committee made its recommendations, but the grievance of the Petitioners is because some of the plots were not reverted.

46. Dealing with the contentions advanced by Mr. De Sa as regards the 73rd amendment to the Constitution in respect of Panchayats, it is his categorical submission that it is wrongly assumed that the Panchayat will plan like the Town Planner. By inviting our attention to the scheme contained in the Constitution involving Articles 243-C and 243-G, he would submit that it pertain to economic development and social justice and this would not cover town planning which is the function of an expert and therefore, the decision in **Charan Sovinda Waghmare** (supra) would apply in the present scenario. He would also distinguish the decision in the case of **Rajendra Shankar Shukla** (supra) in that regard and according to him, the State had to make certain alterations or modifications, which is the power available under Section 36 of the TCP Act as the State has to make arrangements

for various amenities like hospitals, educational complex, sports complex, market complex etc.

Mr. Mehta has placed before us the list of these proposed sites introduced in the ODPs, within the permissible usage of the area in conformity with the Regional Plan, which is the broadest planning and does not provide for minute infrastructural requirements like the sewage water treatment plants, parks, grounds, disaster management sites etc. He has placed before us the proposals in the ODPs for Candolim, Arpora-Nagoa, Parra and Calangute villages which include many infrastructural amenities.

47. Defending the action taken by the State, we also have an affidavit of Respondent No. 6 on record, who has adopted a specific stand that as a Chairman of the Committee, he has exercised all the powers available to him, but this was all in consultation with the TCP and other officials of the Department.

48. In PIL Writ Petition No. 30 of 2023, filed by Goa Foundation, an NGO based in Goa, a challenge is raised to the impugned circular issued by the Chief Town Planner, Town and Country Planning Department, thereby declaring that subsequent to the withdrawal of the Calangute-Candolim planning areas and Arpora-Nagoa-Parra planning areas, the function of issuing the technical clearance for construction/sub-division shall be performed by the North Goa TCP Department, Mapusa, which

shall follow the approved ODPs for scrutinizing/issuing permissions for construction, revision, re-construction, sub-division of land, zoning, conversion etc.

49. On the challenge being raised to the said circular, in the Petition, on 14.02.2024, the Division Bench [M.S. Sonak and Valmiki Menezes, JJ.], granted interim relief, thereby staying the operation of the said circular and directing the Respondents-Authorities not to issue further zoning certificates based on the circular, with a further direction to inform the Collector/ Additional Collector not to grant conversion sanads based on the certificates issued by the TCP Department from 16.12.2022 onwards, to plots in Calangute-Candolim and Arpora-Nagoa-Parra without independently verifying the plot zone status in RP-2021.

The Court however, clarified that though a stay is granted to the circular, the direction contained therein to the NGPDA to forward all the files in respect of the areas within the limits of the five villages to the TCP Department is not stayed and it was specifically directed that since the NGPDA does not have jurisdiction to deal with the file, the same shall be forwarded to the North Goa District Office, which shall strictly follow RP-2021.

50. It is the case of the Petitioners that at the time when the Petition was filed, the Petitioners assailed the directions in the circular dated 22.12.2022 in the background of the facts which

placed before us, which disclose that a decision was taken in the 67th meeting of the NGPDA held on 22.06.2017 that Arpora-Nagoa-Parra areas are part of Calangute constituency and Calangute-Candolim planning areas are already notified on 08.01.2015 for which, the ODP has been prepared and it was at a draft stage. In the wake of the request received from the people of Arpora-Nagoa-Parra areas to bring them into the planning area and to prepare the ODP to govern its development, unanimous decision was taken to request the Government to declare Arpora-Nagoa-Parra as planning areas which would work under the NGPDA.

51. A proposal along with the approved planning area map was therefore forwarded to the Government for approval and the said villages were notified as planning areas within the jurisdiction of NGPDA.

The villages of Calangute and Candolim were notified as planning areas and brought within the jurisdiction of the NGPDA and ODPs in respect of these two villages was notified on 29.11.2018. The other three villages of Arpora-Nagoa-Parra were declared as planning areas and were brought within the jurisdiction of the NGPDA and the ODP of these villages were notified on 08.11.2021.

52. Upon the ODPs notified for these villages, the Chief Town Planner, Ex-officio, Joint Secretary (Planning) perceived a grave emergency necessitating the suspension of the ODPs and by invoking the power under Section 40 of the Goa TCP Act, 1974, he superseded the ODPs for the aforesaid five villages for a period of 60 days from the date of issuance of the notification.

The very said notification constituted a Review Committee for reviewing the ODPs for Calangute-Candolim and for Arpora-Nagoa-Parra villages, the Committee to be headed by the Chief Town Planner (Planning) as its Chairman and the Senior Town Planner (North) as its Convenor along with other members.

The notification published in the Official Gazette on 28.04.2022 declared thus:

> *"The Regional Plan Goa 2021 shall be applicable in respect of Calangute-Candolim planning areas and Arpora-Nagoa-Parra planning areas until further orders of the Government."*

The Committee constituted was directed to submit the report to the Government within a period of 60 days.

53. This direction was followed by submission of a report by the Review Committee, which focussed its attention on the preparation of ODPs including the preparation of a land use map as provided under the TCP Act, 1974 and it aimed at the following points for review:

(a) Preparation of vision documents and contents of ODP

(b) Criteria to be adopted to allocate the zoning of the properties within the planning jurisdiction

(c) Assessment of the infrastructure availability in the planning areas.

54. The Committee by taking recourse to Section 35(3) of the TCP Act, deemed it appropriate to appoint a Sub-Committee to consider the objections received under sub-section (1) and to report within such time as the planning and development authority may fix, with regards to the merits and otherwise of the objections. Thereafter, the report of the Sub-Committee was placed before the Committee which observed that the additional change of the zone of the properties, for which neither objections/ suggestions were received nor any proposal regarding the same was reflected in the draft ODP. The Committee also formed an opinion that no proper reasoning was given in the minutes of the Authority while deciding the cases.

The Committee under the chairmanship of the Chief Town Planner, conducted its meetings from time to time, and dealt with the report of the Sub-Committee as well as the draft and final ODP of Calangute-Candolim planning areas and Arpora-Nagoa-Parra planning areas in relation to the proposals related to general public and also sought clarification of change of zone incorporated in the ODP.

55. From the records presented by the NGPDA, the Committee constituted specifically for reviewing the existing ODPs, noted several irregularities as it was noticed that certain tenanted lands having being earmarked under settlement, commercial and recreational zones and it would be preferred to revert the said land back to its original status as no development can be permitted in the tenanted land as per the provisions of Land Revenue Code of State of Goa. The Committee was of the view that it would have been more appropriate not to convert the tenanted paddy fields and the same to be restored to its original status. Similarly, the properties marked as "Agricultural Zone" under RP 2021 were found to have been changed to 'Settlement Zones' and in the opinion of the Committee such change would be detrimental to the overall environment and expected that the Authority should have judiciously carried out the exercise, as changing the zone of agricultural land, would invariably require filling of such land for construction purpose.

56. The Committee also took serious note of several properties which were otherwise marked as "No Development Slope" under RP-2021 being changed to "Settlement Zone" and brought under developable zones. As regards the eco-sensitive zone, the Committee clearly expressed thus:

> *"While discussing on the eco-sensitive zones, the Committee was of the opinion that in no way the*

properties otherwise were marked as "Mangroves" under the RPG-2021 should have been changed to "Settlement Zone" S-2. This observation of the Committee is with a specific reference to the property under Survey No. 213/2 and 11/57 of Candolim and another property under Survey No. 68/6 of Calangute. The Committee was of the strong view that the property should have been retained to its original status as per RP 2021 as "Mangroves".

Similarly, it also came to the light of the Committee that several new roads proposed which deviated from the existing road network, which divided the property, whereas the roads are existing within the same property which passes through the periphery and this would pose great difficulty, with specific reference to several roads where it would be advisable to retain its width as per RP-2021.

57. The Review Committee during its site inspection on 03.06.2022 also specifically noted the following glaring flaws:-

i. Low lying paddy fields have been converted to Developable zones.

ii. Commercial zones have been assigned to the properties which does not have adequate right of way as required under the regulations.

iii. The Zones of the properties, which are slopy and which were earlier NDZ under RPG-2021 have been changed to Settlement zones.

iv. The roads of which width have been reduced may lead to traffic as unauthorized development have already come up on either side of it.

58. It is in this background that the lacunas having been specifically noted in the preparation of the ODPs and the Committee was of the view that a vision document is a must for any planning purpose and this was not envisaged while preparing the ODPs for Calangute-Candolim and Arpora-Nagoa-Parra villages. By specifically taking note of the fact that eco-sensitive areas such as paddy fields, tenanted lands, no development slopes etc. have been changed to settlement zones and other developable zones, it was noted that the change of zone had been effected arbitrarily, without following uniform policy. Since the eco-sensitive areas have been changed to developable zones, perceiving adverse impact on the environment, and also playgrounds/parking areas/recreational open areas having been proposed in low-lying paddy fields, resulting into the filling of large areas of low-lying lands, the Review Committee was of the firm opinion that change of certain areas to "Settlement Zone" without verifying the legality/authenticity of the same has encouraged unauthorized development which was mushrooming all around.

59. The findings and the observations of the Committee were discussed in the TCP Board meeting held on 04.07.2022 where it was brought to the notice of the Board that several development permissions have been issued by the NGPDA on the basis of zoning provisions under the finally notified ODPs of Calangute-Candolim and Arpora-Nagoa-Parra villages and in some cases, the construction was completed whereas in other cases, the construction was in progress or not started at all.

The Board was therefore of the opinion that except where the completion certificates have been issued and the cases where the construction has started, the land use shall be reverted back to its original status under the RP-2021.

The Member Secretary, NGDPA was directed to compile and submit the data of such cases for reverting its land use to RP-2021 status, which otherwise was changed under the ODPs for the two villages.

This direction was complied with by the NGPDA when on 13.06.2022, it furnished information to the Chief Town Planner (Planning), TCP Department as it forwarded the information with regards to the change of zone to RP-2021 to draft ODP 2030 and from draft ODP 2030 to final ODP of Arpora-Nagoa-Parra planning areas as also the information with respect to change of zone from RP-2021 to draft ODP of Calangute-Candolim and from draft ODP 2025 to final ODP.

60. The communication dated 14.06.2022 categorically recorded that at the relevant time, Shri Michael Lobo was the Chairman of the Authority from 2012 to 2019 and the change of zone of Calangute-Candolim planning areas with respect to the item at Serial No. 1, was done by himself by dictating the consultant as to which survey numbers are to be changed into different zones. It was categorically informed that he exerted pressure upon the officers and assumed the power to change the zone of any area whichever he desired and the report in great detail attributes malafide action on his part.

61. In the wake of the findings of the Committee unveiling various illegalities which have been committed in preparing the ODPs in respect of the entries in column no. 2 of the schedule as specified under the corresponding entry in column no. 4, situated within the limits of the respective planning areas and since the findings of the Committee have been accepted by the TCP Department and also by the Government and on the Government expressing satisfaction necessitating part suspension of the ODPs to the extent of the land/area as specified against entries in column 4 of the schedule, the Government of Goa, partly suspended the ODP for Calangute-Candolim planning area 2025 as per the schedule and also the ODP for Arpora-Nagoa-Parra planning areas 2030 as indicated in the schedule. The notification

issued by the Department of TCP on 12.08.2022 categorically directed as below:

> *"During the period of such partial suspension of the said ODPs as aforesaid, every land use, every change in land use and every development in the land/areas as specified in column (4) of the schedule in respect of Calangute-Candolim and Arpora-Nagoa-Parra planning areas are specified in Column (3) to RP-2021."*

By the said notification, the Government invited objections to the proposal to be addressed in writing to the Chief Town Planner (Planning), TCP Department within a period of 60 days from the date of publication of the notification so that they may be taken into consideration before taking a final decision on the said proposal.

62. On 15.12.2022, the notification was published approving the ODPs with the alterations and modifications by stating that vide Government notification dated 12.08.2022, the ODPs were suspended to the extent of the land/area as specified therein and objections were invited from the persons and pursuant thereto and now the Government had approved the ODPs with alterations/modifications in exercise of power conferred under sub-section (1) of Section 37 of the TCP Act, 1974. The NGPDA notified the ODP for Calangute-Candolim planning areas 2025

and Arpora-Nagoa-Parra planning areas 2030, which shall come into operation under Section 37(3) of the TCP Act 1974. The new ODPs were also subjected to the provisions of the "The Goa (Regulation of Land Development and Building Construction) Act, 2008 and the Goa Land Development and Building Construction Regulation, 2010" as amended from time to time.

63. As a sudden move upon revising the aforesaid ODPs, the Government took a decision to invoke the power conferred by sub-section (1) of Section 19 of the TCP Act of 1974 since it was of the opinion that it was necessary in the public interest to withdraw from operation of the TCP Act, 1974, the whole of the planning areas namely, Calangute-Candolim planning areas and Arpora-Nagoa-Parra planning areas. This notification, having been published on 20.12.2022 came into force from the said date.

64. The bone of contention between the Petitioners and the State is about the effect of this decision upon the five villages Calangute-Candolim and Arpora-Nagoa-Parra as they ceased to be planning areas and according to Ms. Alvares, upon withdrawal of these areas of these villages as planning areas, in terms of sub-section (2) of Section (19), the TCP Act, 1974 as well as all Rules, Regulations, Bye-laws, notifications, orders, directions and powers made, issued or conferred under the Act cease to apply to the said

areas and the PDA cease to exercise jurisdiction over the said areas.

Ms. Alvares has placed heavy reliance upon Section 18 of Chapter IV, which provides for the declaration of the planning area by the Government by issuing a notification and according to her, on such declaration the Act shall apply to such area, but when the Government withdraw any area from the operation of the Act, the consequences set out in sub-section (2) of Section 19 shall necessarily follow.

65. We shall now focus our attention on the circular dated 22.12.2022, issued by the TCP Department, subsequent to the Government withdrawing the five villages as planning areas, by invoking the power under Section 19(1), the Chief Town Planner was also of the view that pursuant to the notification published on 20.12.2022 withdrawing the planning areas of Calangute-Candolim and Arpora-Nagoa-Parra, the NGPDA cease to exercise jurisdiction over the said areas. As a corollary to this, the TCP Department would then exercise jurisdiction over the said area and the function of issuing the technical clearances for construction/sub-division would be discharged by the TCP Department. To this extent, it did not pose any difficulty, however, the issue arose, as the circular directed that while granting the necessary permissions including the technical clearances, the Department shall follow the approved ODP for Calangute-

Candolim and Arpora-Nagoa-Parra villages and the conundrum posed by the Petitioners is that as per sub-section (2) of Section 19, when the areas are withdrawn as planning areas, the provisions of the Act itself along with any Regulations, Rules, notifications/orders issued cease to operate i.e. the Revised ODP 2025 for Calangute-Candolim and ODP 2030 for Arpora-Nagoa-Parra cease to have its applicability and it is the specific contention of the Petitioners that all developments must then be governed by the RP-2021.

66. In order to appreciate the arguments advanced by Ms. Alvares and the counter arguments of Mr. Mehta, we must refer to the prevailing statutory regime in the State of Goa.

The Town and Country Planning Act, 1974 which extends to the whole of the State of Goa, has contemplated 'Planning Area' to mean any area declared to be a planning area under the Act. It also defines the term "Local Planning Area" in Section 2(19A) to mean an area other than a planning area.

"Development" as defined under Section 2(10) means the carrying out of building, engineering or other operations in, on, over or under land or the making of any material change in any building or land, or in the use of any building or land, and includes sub-division of any land.

"Development Plan" in terms of Section 2(11) means an Outline Development Plan or a Comprehensive Development Plan prepared under the Act.

67. For managing and implementing the provisions of the Act, there is an appointment of Chief Town Planner (Administration), Chief Town Planner (Land Use) and Chief Town Planner (Planning). Section 4 provides for the constitution of the TCP Board which shall be headed by the Minister in charge of town and country planning as its Chairman and also the secretaries dealing with various subjects.

The function of the Board is to guide, direct and assist the PDA and also to advise the Government in matters relating to the planning, development and use of rural and urban land in the State of Goa and perform such other functions as the Government may, from time to time assign to the Board.

The Board may and shall if required by the Government direct the preparation of the development plan by the PDA and as well co-ordinate and advise on the planning and implementation of physical development programmes within the State of Goa. It is also responsible for preparing and furnishing reports relating to the working of this Act and performing such other functions as are incidental, supplemental or consequential to any of the functions aforesaid or that may be prescribed.

68. Chapter III of the Act 1974 provides for Regional Plans and on the direction of the Government, the Chief Town Planner (Planning) shall prepare a Regional Plan (hereinafter referred as RP, for short) for any part or parts of the State. For the preparation of the regional plan, the Chief Town Planner shall carry out such surveys as may be necessary of the physical, social and economic conditions and potentialities of the area in respect of which the plan is to be prepared.

Section 11 included in Chapter III as set out, the contents of the regional plan and subject to the provisions of the Act and the Rules made thereunder, the Regional Plan as provided shall indicate the stage of the development to be carried out, the network of transport and communication lines, the proposals for conservation and development of natural resources and such other matters as may have an influence on the development of the concerned area.

69. In particular, and without prejudice to the generality of the above provisions, the RP is the broad demarcation of the areas for agriculture, forestry, industry, mineral development, urban and rural settlements and other activities. It shall also provide for the reservation of land for various purposes like recreation, gardens, natural reserves, sanctuaries, health resorts etc. and should ensure the preservation of objects, features, structures or places of historical, natural, archaeological or scientific interest and

educational value. The RP shall also provide for rural and urban centres, existing and new, indicating the extent of their anticipated growth and provide for re-location of the population or industry from over-populated and industrially congested areas, and indicate the density of population.

70. Upon the Regional Plan being prepared by the Chief Town Planner, it shall be forwarded to the Board for its consideration, which is authorized to make changes as may be necessary in the light of the views expressed by it. Thereafter, it is expected from the Chief Town Planner to notify the plan in the Official Gazette and also in one or more local newspapers, inviting comments in writing from the public on the regional plan within such period as specified.

Upon expiry of the period set out in the notification, the Chief Town Planner shall refer the comments received from the public to the Board for its consideration and thereafter, revise the plan in the light of any modifications suggested by the Board and submit to the Government together along with the comments received from the public.

The Government on receipt of this plan may either approve the plan as received by it or with such modifications as may it consider necessary or it may return the plan to the Chief Town Planner with instructions to either modify the plan or to prepare a fresh Regional Plan in accordance with such directions.

71. Upon the aforesaid stages being crossed, the Chief Town Planner (Planning) shall notify the Regional Plan as approved by the Government in the Official Gazette and also in one or more local newspapers. Upon publication of the regional plan under Section 15 for an area, the Act of 1974 contemplates that development programmes undertaken within that area by any private institution or by any other person shall conform to the provisions of such plan, though some concession is permitted in respect of the public projects or scheme of development works.

Section 16A is a provision of significant importance as it reads to the following effect:

> *"16A. Development to conform to regional plan.— (1) No person shall undertake any work of development in contravention of any provision of the regional plan as in force, except the projects/ schemes/development works undertaken by the Central Government or the Government, either by himself or through his servant or agent or any other person and all such development work shall be in conformity with the provisions of the regional plan.*
>
> *(2) Whoever undertakes any work or development in contravention of the regional plan as in force, shall be punished with simple imprionsment which may extend to one year, or with fine of Rs.10.00 lakh, or with both.*
>
> *(3) An offence under this section shall be cognizable."*

72. Upon the RP being notified by publication in the Official Gazette, if at any time thereafter the Government is of the opinion that it deserve to be revised, it may direct the Chief Town Planner to undertake the revision of the regional plan and as per Section 17, the provisions of the Act relating to the preparation of the regional plan shall be followed.

It is also permissible for the Government to withdraw the revised regional plan notified/published in the Official Gazette either with prospective or retrospective effect, as the Government deems fit, either in its entirety or in part and in such a case, the Chief Town Planner shall withdraw the operation of the revised regional plan from the date as directed by the Government and on and from the date of its withdrawal, all development programmes undertaken in a Department or by public and private institutions or by any other person shall conform to the provisions of the existing regional plan.

73. Section 17D is the power of the Government to prepare the Zoning Plan in respect of the whole or any parts of the local planning area [i.e. the area other than the planning area] and the Zoning Plan, as per sub-section (2) of Section 17D shall be prepared after consultation with the concerned local Authority or Authorities and shall be within the broad framework of the Regional Plan. The provisions which are applicable to the preparation of the RP are mutatis mutandis made applicable to

the zoning plan and for the local planning areas, for which the zoning plan is prepared, it shall indicate, define and provide for:

> *"(i) all such matters including planning standards, gross and new density and such guiding principles as the Government may consider expedient to be indicated, defined and provided for in the regional Plan;*
>
> *(ii) detailed development of specific areas for housing, shopping centres, industrial areas, civic centres, educational and cultural institutions, rain water harvesting, garbage management, cattle pounds and other public utilities;*
>
> *(iii) control of architectural features, elevation and frontage of buildings and structures."*

74. Chapter IV of the TCP Act 1974 captioned as "Declaration of Planning Areas and Constitution of the Planning and Development Authorities", authorises the Government to declare any area to be a planning area for the purposes of the Act, by way of notification and on such declaration, the Act shall apply to such areas.

Since the counter argument revolves around this provision, we deem it appropriate to reproduce the same as below:

> *"18. Declaration of planning areas, their amalgamation, sub-division, etc.—*
> *(1) The Government may, by notification declare any area to be a planning area for the purposes of this Act, and on such declaration, this Act shall apply to such area:*

Provided that no cantonment area or part thereof shall be included in a planning area.

(2) Every notification issued under sub-section (1) shall define the limits of the area to which the notification relates.

(3) The Government may, after consultation with the Board, amalgamate two or more planning areas into one planning area or sub-divide a planning area into different planning areas and may include any such sub-divided area or areas in any other planning area.

(4) The Government may, by notification, direct that all or any of the rules, regulations, bye-laws, notifications, orders, directions and powers made, issued or conferred and in force in any planning area at the time of amalgamation, sub-division or inclusion under sub-section (3) shall apply to the planning area or areas as so amalgamated or sub-divided or included, with such exceptions, adaptation or modifications as may be specified in the notification, and thereupon such rules, regulations, bye-laws, orders, directions and powers shall apply to such planning area or areas without further publication."

75. The Act also vest the power in the Government to withdraw the planning from the operation of the Act and Section 19 provides for the consequences upon such withdrawal by specifying as under:

"19. Power to withdraw planning area from operation of the Act.—

(1) The Government may, if it is of opinion that it is necessary so to do in the public interest by notification, withdraw from the operation of this Act the whole or part of any planning area.

(2) When a notification is issued under sub-section (1) in respect of any planning area or part thereof —

(i) this Act and all rules, regulations, bye-laws, notifications, orders, directions and powers made, issued or conferred under this Act, shall cease to apply to the said area or part and the Planning and Development Authority, if any constituted, under this Act shall cease to have jurisdiction in respect of the said area or part, as the case may be; but where any Planning and Development Authority has been constituted exclusively for such area or part, such Authority shall, on the date of the notification stand dissolved;

(ii) the Government shall, after consulting the Board, the Planning and Development Authority and the local authority or authorities concerned, frame a scheme determining the portion or portions of the balance of the fund of the Planning and Development Authority concerned which shall vest in the Government and in the local authority or authorities concerned, and the manner in which the properties and liabilities of the Planning and Development Authority

shall be apportioned between the Government and such local authority or authorities, and on the scheme being notified in the Official Gazette, the fund, property and liabilities of the Planning and Development Authority shall vest and be apportioned accordingly."

76. Upon an area being carved out as a planning area, Chapter VI of the Act provides for the preparation of ODP by the Planning and Development Authority (PDA) after consultation with the concerned local Authority or Authorities if any, for the planning area within its jurisdiction which is to be submitted to the Government through the Board for provisional approval. Section 30 of the Act provides for the contents of the ODP and like the regional plan, the ODP shall broadly indicate the manner in which the land in the planning area is proposed to be used and shall also provide for the allocation of areas or zones of land for use for residential, commercial, industrial, agricultural purposes etc.

The provision read thus:-

"30. Contents of Outline Development Plan.— (1) An Outline Development Plan shall—

(a) indicate broadly the manner in which the land in the planning area is proposed to be used;

(b) allocate areas or zones of land for use —

(i) for residential, commercial, industrial and agricultural purposes;

(ii) for public and semi-public open spaces, parks and playgrounds; and

(iii) for such other purposes as the Planning and Development Authority may think fit;

(c) indicate, define and provide—

(i) for existing and proposed national high-ways, arterial roads, ring roads and major streets; and

(ii) for existing and proposed lines of communications, including railways, tramways, airports and canals."

Sub-section 4 of Section 30 also deserves reproduction as it reads thus:

"(4) After the coming into operation of Outline Development Plan and defining the Zone thereof, the conversion shall be in conformity with the contents of an Outline Development Plan and in accordance with such procedure as may be prescribed."

77. Section 31 provides for the preparation of a comprehensive development plan by every PDA, not later than three years from the date of its constitution or appointment, in consultation with the local authority or authorities.

Section 32 has prescribed as to what shall be the contents of the comprehensive development plan as it shall indicate, define and provide for all the matters that have to be, or maybe,

indicated, defined and provided for in the ODP with such modifications as the PDA deems fit and it shall also provide for areas reserved for different purposes, comprehensive land allocation of areas or zones for residential, commercial, industrial, agricultural or other purposes, areas for future development and expansion, and areas for new housing, amenities services, utilities etc.

78. Any person aggrieved by the provisions of the Development Plan coming into operation is entitled to prefer an Appeal before the District Court questioning its validity of any of its provisions on the ground that it is not within the powers conferred by the Act, or any requirement of this Act or of any rules made thereunder had not been complied with in relation to the making of such Development Plan and thereafter, the District Court may either stay the operation of the development plan or quash the same on being satisfied that the development plan or any provisions therein are not within the powers conferred by the Act, or that the interests of the applicant have been substantially prejudiced by failure to comply with any requirement of the Act or that it affects the property of the applicant.

79. Upon the development plan being prepared, it shall be submitted to the Government for its approval and thereafter published by a notification inviting objections within a stipulated

period and upon the objections being considered, by the Committee appointed by the PDA, it shall consider the report and make such alterations and modifications in the development planning as it deems fit to be forwarded to the Board and also the Government, which shall then accord its approval to the plan received or approve it with such alterations or modifications as it may be considered necessary.

The next stage in the scheme is the publication of the notification of approval of the development plan which shall come into force on the date of its publication.

There is also a provision for alteration of the development plan and making of minor changes prescribed in Section 39 and it contemplates the same procedure to be followed as if the development plan is being considered in its formulation as contemplated under Sections 34 to 38.

Section 40 is the power to the Government to suspend the development plan if it is satisfied that a great emergency exists which necessitates suspension for such period as the Government thinks fit.

80. In the scheme of the Act of 1974, by virtue of Section 42, it is made clear that on and from the date on which the public notice of the preparation of the development plan is published, under sub-section (1) of Section 35, every land use, every change in land use and every development in the area covered by the Development

Plan shall conform to the provisions of the Act and the Development Plan as finally approved by Government under Section 36.

81. Supplementing the TCP Act, 1974 there is another statute providing for regulation and control on building construction and land development in the State of Goa i.e. The Goa (Regulation of Land Development and Building Construction) Act, 2008, which also is applicable to the whole State of Goa.

The Government is authorized under the said Act to frame Regulations for carrying out the provisions of the Act by following the procedure set out in Sections 5, 6 and 7.

82. In the exercise of these powers, the State Government has formulated the Goa Land Development and Building Construction Regulation, 2010 which govern the land development and building constructions in the State of Goa irrespective of whether the construction is to take place in the planning area or the local planning area.

For giving effect to the Regulations, it has defined various terms and Regulations 2(97) and 2(98) define "Plan" and "Planning and Development Authority" as below:

> *(97) "Plan" means the plans such as Regional Plan, Outline Development Plan, Comprehensive Development Plan, and Zoning Plan, approved by the government under the relevant provisions of any Act or Rules made*

there under and shall include any plans, schemes approved by the Government;

(98) "Planning and Development Authority" or "PDA" means the Planning and Development Authority constituted under the Town & Country Planning Act, 1974.

83. Regulation No. 3 set out the procedure and requirement for securing development permission, sub-division permission, technical clearances, construction license and completion certificate/occupancy certificate. Regulation 3.1 clearly stipulates that any development shall be in conformity with the relevant Acts, Rules and Regulations and "Appropriate Plan in Force" and that no development shall be carried out without obtaining prior permission in the manner prescribed under the Regulations from the Competent Authority.

84. Reading of the Regulation 2010 would make it clear that for carrying out the development, an application shall be made seeking development permission to the PDA; technical clearance permission to be sought from the TCP Department whereas the building licence/permit shall be obtained either from the Municipal Council or from the Village Panchayat.

85. Regulation 6 is the Regulation pertaining to zoning and use of the land and for regulating the development in terms of FAR,

coverage, use of the building, height of the building, and the use of the plot within the zone, there is a bifurcation into:

(a) Regional plan of Goa;

(b) Development Plans (notified);

(c) Development Plan of Withdrawn Notified Areas; and

(d) Part-Regional Plan/Zoning Plans/Town Planning Scheme or any other plan prepared for development control as the case may be.

86. Regulation 6.1.1 specifies the FAR permitted along with the permissible height dependent upon the zone in which the land is situated i.e. in case of the Regional Plan, Outline Development Plans/Comprehensive Development Plans and also a specific provision is made for the areas for which the ODPs were prepared, when they were notified as planning areas, but they were subsequently withdrawn/de-notified under Section 19 of TCP Act, 1974.

Thus, the Regulations of 2010, which are applicable to all developments, even contemplate a scenario where a particular area is withdrawn from the planning area and to all these different categories, the provisions governing the uses as well as the permissible user of the land would apply with equal force.

Regulation 6A.4, relating to minimum width of access, permissible coverage, FAR, for different zones like residential/ commercial/industrial, as per Clause 13 clearly provide as below:

> *"All the areas outside the ODP (Outline Development Plan) shall conform to the classification of settlements as approved in the finally notified Regional Plan for [in force]."*

87. In the wake of the aforesaid statutory scheme, when we have perused the sequence of events placed before us, we have noted that the ODPs notified for Calangute and Candolim villages as well as villages of Arpora, Nagoa and Parra were suspended as the Government was satisfied by the grave emergency that existed due to the large-scale illegalities observed then, namely, land zoning of as eco-sensitive areas in RP-2021 and therefore NDZ (tenanted agricultural land, mangroves, width of roads, khazans, etc.) being re-zoned as settlement/commercial in the ODPs and thereby allowing the development. A Review Committee (RC) was constituted to have an in-depth study and the report clearly found favour with the rampant conversion of zones carried out arbitrarily and without following uniform policy and it was clearly opined that the changes of eco-sensitive zones to developable zones may adversely affect the environment. In the report of the Review Committee, it was recommended that, total 985 sub-division zones be returned to the RP-2021 zone status.

Worth it to note that the Report of the Review Committee was accepted by the TCP Board as well as the Government.

88. This prompted the Government to issue a fresh notification and it suspended significant parts of the two ODPs on 12.08.2022 by clearly providing that the listed survey numbers in the RC Report were contrary to the RP and it directed that while the final decision is being taken, they would follow the RP zoning whereas the remaining survey numbers would continue to be in the zone as shown in the ODPs. Objections were also invited in regard to the modified proposals.

89. However, from this stage, we find a turnabout approach on the part of the TCP Board and the Government, as at a single meeting the TCP Board considered all the survey numbers/plots and zoning as per the Committee's lookout and it also added several new zone changes on its own which were not part of the earlier notification dated 12.08.2022 and the revised ODPs were submitted to the Government for approval. Some 142 new zone changes were added without following any statutory procedure and our attention is invited to these zones by Ms. Alvares through a tabular representation annexed by the Petitioners. According to her, the introduction of new zones has to be considered as a consequence of indirect adjudications or interpolations.

90. The Government notified two revised ODPs on 13.12.2022, which did not return all the plots indicated in the Review Committee to the eco-sensitive zone of the RP, but continued with the rampant classification of the plots into settlement zones.

The revised ODPs came into force on 15.12.2022, but immediately thereafter i.e. on 16.12.2022, the Government withdrew the five villages as planning areas by invoking sub-section (1) of Section 19 and apparently the consequences under sub-section (1) of Section 19 entailed.

The moment the five villages ceased to be in the planning areas upon a notification issued by the Government, the provisions of the TCP Act, 1974, as well as all Rules, Regulations, Bye-laws, notifications and orders, directions and powers made/ issued under the Act, ceased to apply to the said villages, which definitely included the Outline Development Plans. In fact, it is worth to note that, the Government itself was conscious of the consequences of the withdrawal of the five villages from the planning areas, since they ceased to be planning areas and became the non-planning areas and the PDA under whose umbrella they were made to function, i.e. the NGPDA, ceased to govern the development of this area.

91. Being cognizance of its effect, when the Government issued a notification on 28.04.2022, suspending the Outline Development Plan for a period of 60 days in respect of the five

villages, it clearly provided that as long as the ODPs remain suspended, the Calangute-Candolim planning area and Arpora-Nagoa-Parra planning area shall be governed by the Regional Plan Goa–2021 until further orders of the Government. Even in the notification published on 12.08.2022, after the Review Committee had examined the ODPs and submitted its findings to the Government, which had unveiled various illegalities in preparation of the ODPs, which were clearly enlisted in column no. 2 of the schedule appended to the notifications in respect of the land in this area as specified against column no. 4, within the limits of the respective planning area, the notification partly suspended the applicability of the ODP for the items enlisted and provided that in respect of those areas specified in column 4 in the Calangute-Candolim planning area and the Arpora-Nagoa-Parra planning area, the entry specified therein would conform to the Regional Plan-2021. However, from 16.12.2022 to 14.12.2024, several zoning certificates reflecting status as per the December ODPs were issued and this is evident from the affidavit dated 08.04.2024 filed by the Town & Country Planning Department. This facilitated the real estate, as based on these zoning certificates, various conversion sanads, as well as technical clearances and construction licences, were issued.

This all was stalled when the High Court on 14.02.2024 granted an interim order.

92. A careful reading of the provisions under Chapter IV and in particular Section 18, which has empowered the Government to declare any area to be a planning area for the purposes of the Act, upon such a declaration, the Section provides that the provisions of the Act shall apply to such area.

The words used in the said Section "this Act" is clearly indicative of all the relevant provisions relating to the planning areas and the provisions relating to the PDA shall become applicable to the areas so declared by the notifications by the State Government. For giving a true effect to the intention of the legislature, the word "this Act" in Section 18, has to be construed to mean the provisions in the Act of 1976, relating to the planning areas and the Planning and Development Authorities (PDA).

93. Section 18 which finds its place in Chapter IV is a Chapter pertaining to the declaration of planning area and constitution of the Planning and Development Authority. However, the land use of the land falling within the jurisdiction of PDA is governed by Chapter V titled as "Present Land Use" and the preparation of Outline Development Plans (ODPs) is covered in Chapter VI, which set out the procedure for preparation of ODP/ Comprehensive Development Plan, its contents as well as the manner in which the development plan shall come into operation and even a provision for Appeal if any person is aggrieved by the provisions contained in the development plan.

Chapter VII which contain provisions for control of development and use of land is equally applicable to the planning area as it clearly provides that for the preparation of a development plan, every land use, every change in land use and every developmental area covered by development plan shall conform to the provisions of "this Act" and the development plan as finally approved by the Government.

94. A thorough reading of the Act of 1974 would disclose that at various places the legislature has used the words "this Act", the Act being the Goa Town & Country Planning Act, 1974, which provide for planning the development and use of rural and urban lands in the State of Goa and for purposes connected therein. Sub-section (2) of Section 1 in Chapter I clearly provide that the Act of 1974 shall extend to the whole State of Goa. The Act, therefore, takes within its sweep the entire State irrespective of whether the area is the local planning area or the planning area since the statute governs both. The Town and Country Planning Board constituted under Section 4, is a statutory body to guide, direct and assist the planning and development authorities under the Act and to advise the Government in matters relating to planning, development and use of rural and urban land in the State of Goa.

95. The Act contemplate various plans and as the Regulation of 2010 has defined plan to mean Regional Plan, Outline

Development Plan, Comprehensive Development Plan and Zoning Plan, which is approved by the Government under the provisions of the Act of 1974 or the Rules made thereunder and also the plans approved by the Government.

The functionaries for implementation of various plans are the Authorities constituted under the Act which would include the Chief Town Planner as well as the Planning and Development Authority i.e. PDA, constituted under Section 20 of the Act.

96. The Regional Plan is a broad demarcation of the areas in the State for different types of activities as well as the urban and rural settlements. It is indicative of the stages at which the development will be carried out, and also contain proposals for the conservation and development of natural resources which have its presence in the State and deal with the matters which may have an influence on the development of the concerned area. While preparing the development plan, the Chief Town Planner shall actually assess the necessary physical, social and economic conditions and potentialities of the area with respect to which the Regional Plans are prepared, together with the report explaining various aspects of development proposed in such Plans. The Regional Plan being a broad demarcation of the areas for agricultural, forestry, industry, mineral development, urban and rural settlement etc. It is imperative for every person/body to undertake any work of development in consonance with the Regional Plan and no person

shall undertake any work or development in contravention to any provision of the Regional Plan in force and whosoever does so, is liable for punishment as it would constitute an offence.

It is open to the Government to revise the development plan if it feels it to be so revised by following the procedure prescribed.

97. The Act also contemplate a zoning plan to be prepared by the Chief Town Planner in respect of the whole or part of the development plan area which means an area other than the planning area and this zoning plan as per sub-section (2) of Section 17 of the Act shall be within the broad framework of the Regional Plan. Therefore, the zonal plan is what is contemplated for the local plan area.

The next category of development is that of areas which are declared to be 'Planning Areas' and upon its declaration, the provisions applicable in the Act relating to planning areas shall be made applicable. The Government, however, is empowered to withdraw an area from the planning area, if it is necessary to do so in the public interest and once it ceases to be a planning area, the provisions (in this Act) along with all the Rules, Regulations, notifications, orders under (this Act) shall cease to apply to it.

98. From a meaningful reading of the Act of 1974, with reference to its preamble and a conjoint reading of the different provisions contained therein, it is a statute intended to provide for

planning the development and use of land in the State of Goa, clearly indicating that it applies to all the parts of land in the State, but for the sake of its effective implementation, some areas will be declared by the Government to be 'Planning Areas' and its development is assigned to the Planning and Development Authority, for the purpose of guiding the development in the area. It is also permissible for the Government to appoint any local authority as planning and development authority for the area comprised within the local limits of the jurisdiction of such local authorities and for such other contiguous or adjacent relief or the areas that the Government may declare as planning areas under Section 18.

99. Upon the Planning and Development Authority being constituted, it is duty-bound to prepare a land use map and a land use register indicating the use of every piece of land in the planning area and it is also imperative for the PDA to prepare in consultation with the local authority an Outline Development Plan (ODP) for the planning area within its jurisdiction, which shall come into effect on being approved by the Board and the Government and further approved by the Board. The ODP is expected to indicate broadly, the manner in which the land in the planning area is proposed to be used, including the allocation of areas or zones for land use for different purposes.

100. After coming into operation of the ODP and defining of the zone thereof, the conversion of land shall be in conformity with the contents of the ODP and in accordance with such procedure as is prescribed. Thus, from the coming into effect of the Development Plan, it shall govern the 'planning area' which was declared by the Government under Section 18 of the Act.

It is permissible for the Planning and Development Authority after every ten years of coming into effect of the Development Plan after consultation with the local authorities to permit any alterations or additions considered necessary to the development plan in operation and this may include carrying out minor changes as contemplated provided the changes are in the public interest and are notified to the public.

101. In the light of the above scheme of the Town and Country Planning Act, 1974, there exist a Regional Plan-2021 prepared under Section 15, for the entire region and all development programmes undertaken within that area by a private institution or by any other person shall conform to the provisions of such Regional Plan. The ODP on the other hand is restricted to the planning area, the development of which shall be contemplated and perceived by the PDA.

When an area declared as a 'planning area', cease to be so, then the PDA exercise no control over it. This area then becomes "non-planning area", still governed by the provisions of the Act of

1974 as the Act applies to the whole State of Goa, but all the provisions relating to the 'planning area' cease to govern it.

102. Therefore, when ODPs are prepared by the PDA after consultation with the local authority for the planning area within its jurisdiction and when such area ceases to be so, the ODP also ceases to govern the development of this area. However, it is not a scenario where there is a complete vacuum as it was attempted to be projected before us by the learned Senior Counsel Mr. Mehta representing the State, as even if an area falls out of 'planning area', it still remains within the ambit of the Act of 1974 and what continue to govern it, is the Regional Plan, published under Section 15 of the Act and the development work to be undertaken by the private institution or any other person shall then conform to the provisions of the existing Regional Plan, as every development in the State must conform to the Regional Plan.

103. We are, therefore, in agreement with Ms. Alvares who would read the term "this Act" in Section 18 to mean that the provisions pertaining to the 'planning area' including the applicability of the ODP and the effect of sub-section (2) of Section 19, upon withdrawal of the planning area, is specific i.e. it no longer remains as a planning area, it shall no longer be under the control of the NGPDA and it shall no longer be governed by the revised ODPs, published on 15.12.2022, as on 16.12.2022 the Government

issued a notification invoking the power under sub-section (1) of Section 19, thereby resulting into consequences of the ODPs not being applicable to these five villages i.e. Calangute, Candolim, Arpora, Nagoa and Parra.

The aforesaid interpretation is probably the one which was also implicit to the Government and that is the reason, that upon issuance of the notification on 16.12.2022 withdrawing the five villages as planning areas, on 22.012.2022, the Government deemed it fit to issue a circular, in the aftermath of the withdrawal of the five villages from the planning area and since the NGPDA ceased to exercise jurisdiction over the said area and the circular assumed that the TCP Department shall now exercise jurisdiction over the said area and therefore, the technical clearances shall be granted by it, but while doing so it shall follow the approved ODP of Calangute, Candolim, Arpora, Nagoa and Parra villages, which in fact, had ceased to exist once these villages cease to be the 'planning areas'.

104. Repeated attempts have been made by the State Government for the applicability of the ODPs to the five villages, which were earlier declared as planning areas, but ceased to be so w.e.f. 16.12.2022.

When the High Court stayed the effect of the circular of 22.12.2022 by an interim order passed on 14.02.2024, an Ordinance was promulgated on 29.02.2024 by inserting an

amendment in Section 19, thereby providing that even if an area ceases to be a planning area, the existing ODP would continue to operate till the area is declared as a planning area, at which time, the Regional Plan would apply.

105. It is worth to note, that upon the Ordinance being challenged, the Division Bench of this Court, by its order dated 02.05.2024 clearly pronounced that the promulgation of the Ordinance was unsustainable as existing an interim order passed by this Court, the Government did not do away with the base of the judgment as the order was based upon lack of power to issue such circular and also on the ground that the December ODPs were vitiated by non-application of mind, unreasonableness and manifest arbitrariness. The High Court, therefore, stayed the operation of the December ODPs and clearly directed that all construction in the five villages shall be only on the basis of the RP zoning as directed in its earlier order dated 14.02.2024.

106. Be it so, one more attempt was made by the Government when it issued an Executive Order on 22.08.2024, this time invoking the power under Article 162 of the Constitution of India, published in the Official Gazette on 29.08.2024, in the background of facts and by declaring that to maintain effective regulation and development control over the affected planning area(s), the Executive Order is issued.

The order directed continuation of the previous development plan by stating thus:-

> *"(1) Following the withdrawal of any planning area or part thereof and the consequent cessation of the operation of the TCP Act, and in the absence of any applicable statutory provisions, the same Outline Development Plan/Development Plan which was in force in such affected planning area(s) on the date of its withdrawal shall continue to apply to such affected planning area(s).*
>
> *(2) The Outline Development Plan/Development Plan referred to in sub-clause (1) above, shall govern all aspects of land use, development and building regulations within the affected planning area(s)."*

107. The Government order accepts that the affected planning area(s) are no longer governed by the provisions of the TCP Act, 1974 and therefore, they shall be regulated and governed by the TCP Department in accordance with the order issued and all approvals/permissions/sanctions/NOCs for construction/sub-division of land, development, conversions, etc. shall be issued by the district offices/branch offices of the TCP Department by following the ODP/Development Plan referred to in Clause (I) [i.e. December ODP]. But the order clarified that if there was no ODP in the affected planning area, then the TCP Department shall strictly follow the RP in force for scrutinizing the Applications for construction, permissions etc.

Worth it to note that the order issued by the Government is not restricted to the five villages, but it is issued in the form of a clarification for the consequences to follow upon withdrawal of the area as a planning area.

108. The background of the impugned order is found to be stated therein in the following words:

> *"And Whereas there is no specific statutory framework for regulating planning and development applicable to such withdrawn planning area(s), following the issuance of the notification under section 19(1) of the TCP Act;*
>
> *And Whereas it is essential, in public interest, to ensure the continued regulation and orderly development of such withdrawn planning area(s) until such time new statutory provisions are enacted or the situation is otherwise addressed."*

The aforesaid reasoning justify the existence of the exercise of powers under Article 162 of the Constitution of India and in accordance with the need to maintain effective regulation, development and control over such affected planning area(s).

The impugned order dated 22.08.2024 (published on 29.08.2024) being referred to as "Executive Order" also clarify that any person intending to carry out any development or change of use of land shall make an Application in writing to the TCP

Department as specified in the Regulations of 2010 and the procedure prescribed thereunder would then be followed.

109. The net effect of the executive directions contained in the order dated 22.08.2024, is clear to us and to everyone, declaring that pursuant to an area being withdrawn from the planning area under sub-section (1) of Section 19 and upon the consequences to follow as contemplated in sub-section (2) of Section 19, when the TCP Act failed to have its applicability to such area and in absence of any specific statutory framework regulating the planning and development applicable to such withdrawn planning area, the executive power is exercised to fill in the gap.

110. The question for consideration before us is whether it is permissible for the Government to avail the executive fiat, on the premise that there exist no statutory regime governing a scenario of withdrawal of a planning area under Section 19 and when the provisions of the TCP Act, 1974 as well as the Regulations framed thereunder also have no enforceability in such area(s) and this case with specific reference to the five villages with which we are concerned.

The Executive Order dated 22.08.2024 is challenged on the ground that it has been issued *dehors* the scope of Article 162 of the Constitution of India as there exists a provision in the TCP Act, 1974 governing the same field and therefore, invocation of Article

162 to issue directions which contradict the statutory provision is not permissible.

For a better appreciation of the said argument, we deem it appropriate to reproduce Article 162 of the Constitution.

> *"162. Extent of executive power of State - Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws:*
>
> *Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the Constitution or by any law made by Parliament upon the Union or authorities thereof."*

111. The law as regards Article 162 is settled by this time through various precedents. In **Rai Sahib Ram Jawaya Kapur & Others Vs. The State of Punjab**[8], the Supreme Court analysed as to what an executive function mean and implies and it laid the following proposition of law:-

> *"12. It may not be possible to frame an exhaustive definition of what executive function means and implies. Ordinarily the executive power connotes the residue of governmental functions that remain after legislative and judicial functions are taken away. The Indian Constitution has not indeed recognised the*

8 **AIR 1955 SC 549**

doctrine of separation of powers in its absolute rigidity but the functions of the different parts or branches of the Government have been sufficiently differentiated and consequently it can very well be said that our Constitution does not contemplate assumption, by one organ or part of the State, of functions that essentially belong to another. The executive indeed can exercise the powers of departmental or subordinate legislation when such powers are delegated to it by the legislature. It can also, when so empowered, exercise judicial functions in a limited way. The executive however, can never go against the provisions of the Constitution or of any law. This is clear from the provisions of Article 154 of the Constitution but, as we have already stated, it does not follow from this that in order to enable the executive to function there must be a law already in existence and that the powers of the executive are limited merely to the carrying out of these laws."

112. In **Bishambhar Dayal Chandra Mohan & Others Vs. State of Uttar Pradesh & Others**[9], the decision on which, Mr. Mehta has placed reliance, the Apex Court was confronted with the exercise of the executive power and by relying upon the decision in the case of **Rai Sahib Ram Jawaya Kapur** (supra) and the scope of the executive power, held that the State in exercise of its executive power is charged with the duty and the responsibility of carrying on the general administration of the State. So long as the State Government does not go against the

9 (1982) 1 SCC 39

provisions of the Constitution or any law, the width and amplitude of its executive power cannot be circumscribed and if there is no enactment covering a particular aspect, certainly the Government can carry on the administration by issuing directions or instructions, until the legislature makes a law in that behalf, otherwise, the administration would come to a standstill.

113. The earlier decision in the case of **Naraindas Indurkhya Vs. the State of Madhya Pradesh**[10] and the principle laid down therein was invoked, where it was held that the State Government can act in exercise of executive power of the State under Article 162 of the Constitution, in relation to any matter with respect to which the State Legislature has power to make laws even if there was no to legislation to support such executive action and on finding that the State legislature was competent to enact a law in the wake of entry 33 of list 3, involving food staffs, including oil seeds and oil, it was held that the executive power being coextensive with the legislative power, the executive can step in, but subject to the limitation contained in proviso to Article 162, which directed that in any matter in respect of which the legislature of State and parliament has powers to make law, the executive power of the State shall be subject to and limited by executive powers expressly conferred by the Constitution or by any

10 (1974) 4 SCC 788

law made by the parliament upon the union or the authorities thereof.

114. In **P.H.Paul Manoj Pandian vs P.Veldurai**[11], the Apex Court once again explored the scope of the executive power of State under Article 162 along with the recommendations along with the limitation imposed thereof and in paragraphs 46 and 47 observed thus:

> *"46. Under Article 162 of the Constitution, the executive power of the State extends to matters with respect to which the State Legislature has power to make laws. Yet the limitations on the exercise of such executive power by the Government are twofold; first, if any Act or law has been made by the State Legislature conferring any function on any other authority, in that case the Governor is not empowered to make any order in regard to that matter in exercise of his executive power nor can the Governor exercise such power in regard to that matter through officers subordinate to him. Secondly, the vesting in the Governor with the executive power of the State Government does not create any embargo for the legislature of the State from making and/or enacting any law conferring functions on any authority subordinate to the Governor.*
>
> *47. Once a law occupies the field, it will not be open to the State Government in exercise of its executive power under Article 162 of the Constitution to*

11 (2011) 5 SCC 214

prescribe in the same field by an executive order. However, it is well recognised that in matters relating to a particular subject in absence of any parliamentary legislation on the said subject, the State Government has the jurisdiction to act and to make executive orders. The executive power of the State would, in the absence of legislation, extend to making rules or orders regulating the action of the executive. But, such orders cannot offend the provisions of the Constitution and should not be repugnant to any enactment of the appropriate legislature. Subject to these limitations, such rules or orders may relate to matters of policy, may make classification and may determine the conditions of eligibility for receiving any advantage, privilege or aid from the State."

115. It was further clarified by the Apex Court that the powers of the executive are not limited merely to carrying out of the laws and at times the executive exercises power to fill gaps by issuing departmental orders as the executive power of the State is co-terminus with the legislative power of the State Legislature and if the State Legislature has jurisdiction to make law with respect to a subject, the State Executive can make regulations and issue Government orders with respect to it, subject, however, to the constitutional limitations and such administrative rules and/or orders shall be inoperative if the legislature has enacted a law with respect to the subject.

It is thus evidently clear from the aforesaid pronouncement that the power of the Government to issue orders is traceable to Article 162 and this power is co-terminus with the legislative power, which permits the State to step in to fill in the vacuum created by the statute. This, however, is subject to the limitation that executives cannot trench into an area covered by the legislation.

116. In **Indian School, Jodhpur & Another Vs. State of Rajasthan & Others**[12], this principle is reiterated in the following words:

> *"115. In the present case, we need not dilate on the factum as to whether the Director, Secondary Education could have issued such a policy document in exercise of executive power under Article 162 of the Constitution, which power exclusively vests in the State Government alone. The fact remains that the direction issued in terms of impugned order dated 28-10-2020, on the face of it, collide with the dispensation specified in the 2016 Act in the matter of determination of school fees and its binding effect on all concerned for a period of three academic years, without any exception. The fact that in the proceedings before the High Court the State Government had ratified the impugned order, does not take the matter any further. In that, there can be no ex post facto ratification by the State Government*

12 (2021) 10 SCC 517

in respect of subject, on which, it itself could not issue such direction in law.

117. As such, it is not open to the State Government to issue directions in respect of commercial or economic aspects of legitimate subsisting contracts/transactions between two private parties with which the State has no direct causal connection, in the guise of management of pandemic situation or to provide "mitigation to one" of the two private parties "at the cost of the other". This is akin to — rob Peter to pay Paul. It is a different matter, if as a policy, the State Government takes the responsibility to subsidise the school fees of students of private unaided schools, but cannot arrogate power to itself much less under Article 162 of the Constitution to issue impugned directions (to school management to collect reduced school fee for the concerned academic year). We have no hesitation in observing that the asservation of the State Government of existence of power to issue directions even in respect of economic aspects of legitimate subsisting contracts/ transactions between two private parties, if accepted in respect of fee structure of private unaided schools, is fraught with undefined infinite risk and uncertainty for the State. For, applying the same logic the State Government may have to assuage similar concerns in respect of other contractual matters or transactions between two private individuals in every aspect of life which may have bearing on right to life guaranteed under the Constitution. That would not only open pandora's box, but also push the State Government to entertain

demands including to grant subsidy, from different quarters and sections of the society in the name of mitigating measures making it financially impossible and unwieldy for the State and eventually burden the honest tax payers—who also deserve similar indulgence. Selective intervention of the State in response to such demands may also suffer from the vice of discrimination and also likely to impinge upon the rights of private individual(s)—the supplier of goods or service provider, as the case may be. The State cannot exercise executive power under Article 162 of the Constitution to denude the person offering service(s) or goods of his just claim to get fair compensation/cost from the recipient of such service(s) or goods, whence the State has no direct causal relationship therewith."

117. In the case of the **State of Sikkim Vs. Dorjee Tshering Bhutia & Others**[13], another angle to the executive power of the State is highlighted by observing that when the statutory provision is rendered unworkable and inoperative for the time being due to some reason and it becomes non-est, till the time it is made operative, the exercise of the executive power is not barred. But it was also reiterated that the executive of the State cannot be exercised in the field which is already occupied by the laws made by the legislature and any order/instruction or notification issued in the exercise of the executive power of the State which is

13 (1991) 4 SCC 243

contrary to any statutory provisions, is without jurisdiction and is a nullity.

In light of the precedents governing Article 162 of the Constitution, it is evident that Article 162 indicates the scope of executive power of the State although it does not confer any power to issue directions thereunder. But the exercise of the said power is always subject to the limitations imposed upon its exercise in the Constitution itself.

118. The Executive Order issued by the State by invoking power under Article 162 is in the background that there is no specific statutory framework for regulating planning and development in withdrawn planning areas to which the TCP Act no longer applies and therefore, it is essential in the public interest to ensure continued regulation an orderly development in such areas until new statutory provisions are enacted or the situation is otherwise addressed.

In support of the impugned Executive Order, the Chief Town Planner in his affidavit dated 06.01.2025 has categorically deposed as under:

> *"I say that by virtue of the operation of the consequences envisaged under Section 19(2) of the TCP Act, the TCP Act itself and all Rules, Regulations, Bye-laws, notifications, orders, directions and powers made, issued or conferred thereunder, cease to apply to such planning area(s) or part thereof. As the*

provisions of the TCP Act itself cease to apply to such withdrawn planning area(s), there is no specific statutory framework which regulates/governs the planning and development applicable to these area(s), following the issuance of the notification under section 19(1) of the TCP Act. In such circumstances, Respondent No. 2 deemed it essential, in public interest, to ensure the continued regulation and orderly development of such withdrawn planning area(s) until such time new statutory provisions are enacted or the situation is otherwise addressed and accordingly issued the impugned Executive Order."

119. In short, the justification offered for issuance of the Executive Order in no uncertain terms is, that the TCP Act along with all the Rules, Regulations, Bye-laws, notifications, orders do not govern the five villages, once they cease to be the planning areas under the Act.

We do not find the said stand to be sustainable and we reason our conclusion by observing that the State is attempting to misread the provisions of Sections 18 and 19 of the TCP Act.

120. The Act of 1976 extend to the whole State of Goa and it has come into force w.e.f. 02.04.1976.

Upon the Town and Country Planning Act coming into force, the planning of the development and use of the rural and urban land in the State of Goa would strictly fall within its purview

and every development activity i.e. the construction of building, use of any building or land including the sub-division, any operations in, on, over or under the land comes under its umbrage being a statute enacted specifically for the planning the development and use of the land in the State.

121. The Regional Plan as contemplated under Chapter III, indicate the stages in which development may be carried out and provide for demarcation of the areas for distinct purposes, as well as it include the proposals for conservation and development of natural resources and all such matters which would impact the development. The Regional Plan prepared by the Chief Town Planner shall receive approval from the Board and thereafter by the Government and upon its publication, all development activities in the State must necessarily conform to the provisions of such Regional Plan.

Every development taking place in State shall therefore conform to the Regional Plan, which is revisable as and when the Government deems it fit. The planning areas are carved out of the larger area in the State to be declared as a 'Planning Area' for the purpose of Act and thereupon the procedure prescribed in the Act in relation to planning areas which are brought under the umbrella of the Planning and Development Authority i.e. PDA, shall become applicable. The planning areas are permitted to be developed in accordance with the Outline Development Plan/

Comprehensive Development Plan prepared by the planning authority, which shall allocate the areas or zones of use for different purposes and also indicate the broad manner in which the land in the planning area is proposed to be used/developed.

The ODP thus restricted its operation to the planning areas, as they are prepared by the PDA, a body appointed to supervise the development of the 'Planning Areas'.

122. On coming into operation of the development plan, after receiving approval from the Government, read with the comprehensive development plan, it shall govern the development in the planning area, with no specific provision in the Act that the ODP must necessarily coincide with the Regional Plan but in the wake of Section 16A, since no development is permissible to be carried out in contravention of the Regional Plan, the safest inference to be drawn is that the ODP shall also conform itself to the broad parameters laid down in the Regional Plan and definitely cannot act in its contravention.

123. When a particular area declared as 'Planning Area', is withdrawn as a planning area in the wake of the notification issued by the State, and it ceases to be so, then the provisions in the Act of 1974 governing the planning area as well as the planning and development authority, which control the planning area shall cease to have its operation, but definitely it cannot be said that the

planning areas so withdrawn shall completely fall outside the purview of the Goa Town and Country Planning Act, 1974.

As we have already noted above, that such areas will fall back as non-planning areas and would abide by the Regional Plan.

We notice a fallacy in the argument of the State, when it assume that no statutory framework is applicable to the withdrawn planning areas as we find that the Goa (Regulation of Land Development and Building Construction) Act, 2008 is an enactment which regulate and control the building construction and land development in the entire State of Goa and this statute governs the land development in the entire State of Goa. Under the enactment of 2008, the Government has power to make Regulations providing for zoning of land and its use as well as the general requirement of land development and in exercise of this power, the Regulation of 2010 has been notified, which also extend to the whole State of Goa, unless the area is specifically exempted.

However, it is incorrect assumption of the State that when the planning area once declared under the Act of 1974, no longer remains to be so, it ceases to have even applicability of Town and Country Planning Act, 1974, as we find that it still continue to govern by the Regional Plan, formulated under Section 15 of this Act as erstwhile planning area falls within the State of Goa and the TCP Act extend to the whole of Goa, from the date it was notified and made applicable for the entire State.

124. In the wake of the wholesome statutory regime in the form of the Town and Country Planning Act, 1974 being available to be withdrawn planning areas, the State Government is surely not justified in invoking the executive power under Article 162 of the Constitution, in issuing the Executive Order on 22.08.2024, on the premise that there is a vacuum, in absence of a statutory regime governing the withdrawn Planning Areas and to fill the gap, the executive must step in and make an 'order' governing the areas which are withdrawn as planning areas.

By applying the principle laid down by the Constitutional Courts from time to time, when it comes to the exercise of the executive power, though the power is coextensive with the legislative power of the State, it is hatched with restriction ingrained in the provisions itself, that the exercise of the power shall be limited and restricted by a power conferred by the Constitution or by any law made by the Parliament upon the Union or authority thereof. The executive power of the State, would in the absence of legislation may extend to making of rules/ orders regulating the business of the executive but definitely such orders under the executive fiat shall not permit causing harm to the provision in the Constitution and they shall be not repugnant to any enactment of the appropriate Legislature.

As long as the Goa Town and Country Planning Act continue to govern the land development in the State of Goa through the Regional Plan, and since the Regional Plan for Goa-2021, is

already in operation, which has been prepared after obtaining necessary reports from sub-committees constituted at the State Level Committee and since the draft Regional Plan-2021 reached the stage of finalization with wider consultation of all stakeholders, we do not find justification in the State issuing the Executive Order. The RP-2021 has removed the existing anomalies in RP-2001 and we had an opportunity to peruse the said document, which has exhaustively done the land use mapping in the State, with reference to Eco-I (i.e. Forest/mangroves, water bodies, paddy fields, khazan lands, and Eco-II (Orchard, natural cover, salt pans, Miz) etc. The permissible land use in RP -2021 has been specifically divided into distinct categories, with its normal uses and uses permitted on special grounds being carved out.

125. It is in the wake of the RP-2021, which is a prevailing Regional Plan for the entire State of Goa, we find the justification offered by the State about an existing lacuna, upon the planning areas being withdrawn in public interest, and when they ceased to be so, it created a complete vacuum.

In fact, a careful reading of the Regulation of 2010 which governs the construction of the buildings in the entire State of Goa falling within the different zone also clearly contemplate the areas which were once upon designated as planning areas but subsequently withdrawn/de-notified and Regulation 6A.4(13)

clearly stipulate that all the areas outside the ODP (Outline Development Plan) shall conform to the classification of settlements as approved in the finally notified Regional Plan in force.

We can have no clarity than the aforesaid statement, contained in the Regulation of 2010, which governs the whole State of Goa.

126. When a statute is enacted for achievement of a specific object, it is duty of the Court to give effect to the intention of the Legislature and it is a well settled rule of construction, that where the plain literal interpretation of a statutory provision result in absurd and unjust result, which could never have been intended by the Legislature, it is open to the Court to modify the language used by the Legislature, so as to achieve its intent of the Legislature, and produce a rational construction. It is open for the Court to read into the statute a condition which, though not expressed, is implicit as constituting the basic assumption underlying the statutory provision.

127. What is ultimately important is to make the statute work, and this can be done only by keeping in mind the intention of the Legislature and the meaningful reading of the statute i.e. a

conjoint reading of its provisions together. In **C.I.T. Vs. J. H. Gotla**[14],the Apex Court noted thus:-

> *"If the purpose of a particular provision is easily discernible from the whole scheme of the Act which in this case is, to counteract the effect of the transfer of assets so far as computation of income of the assessee is concerned, then bearing that purpose in mind, we should find out the intention from the language used by the Legislature and if strict literal construction leads to an absurd result i.e. result not intended to be subserved by the object of the legislation found in the manner indicated before, and if another construction is possible apart from strict literal construction then that construction should be preferred to the strict literal construction."*

128. Thus, a meaningful reading of Sections 18 and 19, which has used the term 'this Act', must be construed to convey, the relevant provisions governing the planning areas under the Act, as only by reading and assigning this meaning to the words 'this Act', the overall object sought to be achieved of the Act of 1974 can be achieved. By no means, the words 'this Act' used in Sections 18 and 19 shall be construed to be read that the TCP Act itself is not applicable and the area which was once upon a time a planning area gets out of the framework of the TCP Act itself. This interpretation definitely is against the intention of the Legislature,

14 (1985) 4 SCC 343

and any interpretation which defeats the purpose of the Legislation must necessarily be avoided.

129. The arguments are advanced before us by Ms. Alvares, in PIL Writ Petition No.30 of 2023 on the validity of December ODPs, as it is her specific submission that it is on account of the gross illegalities noticed in the formulation of the ODPs, the State Government appropriately intervened and suspended the ODPs. It is also argued before us that the ODP notified on 15.12.2022 for villages Calangute-Candolim, and Arpora-Nagoa-Parra were notified without following the procedure in the TCP Act of 1974. Serious violations are brought to our notice as it is seriously contended before us that after the review committee was appointed to carefully analyse the existing ODPs in the wake of the prima facie illegalities noticed, the procedure to be followed would have commenced from the issuance of public notice of the preparation of the development plan but no such process was followed. Instead the notification was issued on 12.08.2022, invoking Section 40 of the Act to partially suspend the ODP and invite objections to its proposal to be submitted to the TCP however no plan was prepared nor it was displayed in public domain.

130. Pursuant to the objections being received on expiry of the stipulated period, the planning and development authority, which

was the only authority to revise the ODP and to appoint the committee to consider the objections and submit its report to the PDA on merit or otherwise of the objections. It would have then made necessary alterations/modifications as necessary and submit the development plan to the Government for approval. However, in the present case, instead of NGPDA, the TCP Board took charge of the situation and appointed a sub-committee on 15.09.2022 to examine the objections received by the TCP, with its members of the Board and the sub-committee submitted its report to the Board. It is a serious grievance of the Petitioner made by Ms. Alvares that the sub-committee, travelled beyond its mandate as it not only considered the objections received but also recommended new zone changes. In the whole episode, the NGPDA was sidelined and the Board itself finalized the zone changes of 985 plots, and that too on a single day i.e. 14.10.2022.

131. Mr. Mehta has justified by the action of the State by submitting that the State has invoked the power under Section 33, we are of the clear view that this power is applicable to the Government only when a development plan is not prepared, published and submitted to the Government by the Planning and Development Authority within the period specified in Sections 29 and 31 or within extended period and/or the Government is of the opinion that such a plan is needed to be prepared by the Chief Town Planner (Planning).

132. We do not find any such contingency existing, which prompted the Government to invoke Section 33 and in fact we must note that the intention of the Government when it suspended the development plan was to take steps towards the organized development as it found fault with the existing ODPs which reveal large scale illegalities as the land zoned as eco-sensitive in RP-2021 and therefore, the NDZ were re-zoned as settlement/ commercial with rampant scope for development. However, for the reasons better known, and which we do not intend to delve into, the Government deems it appropriate to contain fatal flaws in the existing ODPs and brought into force two ODPs for the five villages, in the fragrant violation of the procedure prescribed in the TCP Act.

133. However, since the Government took a decision to remove the planning areas of Calangute-Candolim, Arpora-Nagoa-Parra by exercising its power under Section 19, it clearly excluded the possibility of newly framed ODPs being applicable to them, but the State Government faltered, as on 22.12.2022, the Chief Planner issued a circular declaring that the technical clearance shall be issued based upon December ODPs. Thereafter, it issued an Ordinance in an attempt to make existing ODP applicable despite planning areas being withdrawn and when it did not succeed as it was interjected at both stages by the High Court by its interim order, it invoked the power under Article 162 and issued Executive

Order and now taking a specific ground that there existed a vacuum, as TCP Act, 1974 did not apply to the withdrawn planning areas, it was necessary to fill in the gap, by providing the issuance of technical clearances/permissions as in some or the other area, which intended to have the applicability December ODPs, at the sweet choice of some of those who manipulated the entire show from the suspension of the ODPs till the declaration of the new ODPs.

The Executive Order issued by the Department and Town Planning, as a gratuitous effort, has permitted an appeal to the Goa Town and Country Planning Board, being aggrieved by any action contemplated by the Executive Order. Surprisingly, while providing this appeal, the State has failed to consider its own specific stand that the TCP Act fails to apply to the withdrawn planning areas, but while making a provision for appeal, it permits the appeal to be preferred to the board.

134. In any case, since we are satisfied that the exercise of power by the State in issuing impugned circular dated 22.12.2022 and Executive Order dated 22.08.2024, do not justify its existence and for the reasons recorded by us in the aforesaid paragraphs, the circular dated 22.12.2022 and Executive Order dated 22.08.2024 are quashed and set aside. Since we have set aside the said circular and have expressed a view that the December ODP cannot be made applicable to the Calangute-Candolim and Arpora-

Nagoa-Parra areas upon their withdrawal as planning areas, with effect from 16.12.2022, though contesting arguments advanced before us as regards the validity of the ODPs, we do not intend to touch this aspect.

135. We must however make it clear that zoning certificates which are granted after 16.12.2022 till 14.02.2024 i.e. passing of the order by the High Court and even subsequent thereto, which were made subject to the outcome of the pending writ petition, in terms of the order passed by the Apex Court on 21.05.2024 shall stand nullified since it was based on the revised ODPs notified on 15.12.2022, which in no case can be made applicable to the five villages Calangute, Candolim, Arpora, Nagoa and Parra upon Government withdrawing them as 'Planning Areas' by exercising powers under Section 19 of the TCP Act of 1974.

136. For the reasons recorded above, since we are of the firm opinion that the issuance of the Circular dated 22.12.2022 as well as the Executive Order dated 22.08.2024, run contrary to the statutory scheme in form of Goa Town Country and Planning Department, 1974, as upon the five Villages having been withdrawn as planning areas and the consequences necessarily followed in the wake of sub-section (2) of Section 19, the December ODPs could not be made applicable to them. Upon withdrawal of the villages as planning areas, they must fall back to

the Regional Plan and, therefore, the Executive Order, which permit the Town Planner to grant permission for development as per the lapsed ODPs, cannot be sustained.

137. The Petition is, therefore, made absolute in terms of prayer clause (a) to (c), and prayer clause (ff-c). As a consequence, zoning certificates issued based on the circular as well as the Executive Order, stand cancelled. Since the villages now fall in non-planning areas and the NGPDA has no jurisdiction, but the Town and Country Planning Department has assumed jurisdiction, it is open for it to process the permissions for development not as per the outlined development plan, which has already lapsed but as per the Regional Plan-2021.

138. Dealing with the contentions of Mr. De Sa, representing the Petitioner in PIL Writ Petition No. 24 of 2023, we have perused the constitutional scheme in form of Part IX, the Panchayats and also Part IX-A, the Municipalities inserted by 73rd and 74th amendment in the Constitution w.e.f. 24.04.1993 and 01.06.1993 respectively. There is no doubt in our mind that upon conferring the status upon the Panchayats and Municipalities as the bodies of the local governance at the grass root level, they receive recognition as Planning Authorities to the extent of the works that has been set out in Schedule 11 and Schedule 12 of the Constitution.

Article 243-G read with the 11th Schedule has vested upon the Panchayats, the powers and authorities to enable them to function as institutions of self governance as it *inter alia* provide for preparation of plans for economic development and social justice, with specific focus on the entries enlisted in 11th Schedule to the Constitution.

139. The Panchayat has assumed the role of an institution of self-governance constituted Article 243-B for rural areas, whereas Article 243-ZD provides for a Committee at a district level to be known as 'District Level Committee' to consolidate the plans prepared by the Panchayats and the Municipalities in the District and to prepare draft Development Plan for the District as a whole.

It is open for the legislature of a State to make a provision by the enacting the law with respect to the composition District Planning Committees as well as the functions assigned to such Committees. Every District Planning Committee has an important role in preparing the draft development plan and it will give due regard to the matters of common interest between the Panchayats and the Municipalities which included spatial planning, sharing of water and other physical and natural resources as well as the integrated development of infrastructure and environmental conservation as well as the extent and type of available resources, financial or otherwise.

140. The role of the Panchayat in rural areas and the municipal bodies in urban area, has been well carved out in the constitutional scheme and in order to give effect to the said provisions, laws have been brought into force, which allow them to function as units of self-governance with a significant role in planning of these areas and accordingly, the provision introduced in the distinct legislations had ensured that in preparation of the development plan including the draft development plan, the District Planning Committee will have a definite say.

141. The Goa Panchayat Raj Act, 1994, a comprehensive enactment establishing two tire panchayat raj in the State with elected body of the village and district level, in keeping with the constitutional amendment relating to panchayats for greater participation of the people and for more effective implementation of the rural development programme, has defined Village Panchayat under Section 3, since the Government by notification is empowered to declare a local area comprising of group of villages as the panchayat area and the said panchayat is to perform various functions as specified in Schedule I of the Act so as to promote, health, safety, education, convenience of socio economic well being of the inhabitant of the panchayat area.

142. Section 65 of the Act has specified that all village roads and bridges thereon, cart tracks, and other public places in the

Panchayat area, not being private property or under the control of Municipal Council/Zilla Panchayat or Government shall vest in the panchayat and it may lay down and make new roads, construct new bridges etc. However, the argument of Mr. De Sa that the Panchayat/Municipality as bodies of self-governance shall control development within that area is too tall an argument as the 11th Schedule pertaining to the Panchayats cover the subject of land improvement, implementation of land reforms, land consolidation, soil conservation, roads, culverts, bridges, ferries, etc., it is not the sole repository of these subjects. As far as 12th Schedule which has to be read along with Article 243-W, as regards the powers and responsibility upon the authorities and Municipalities, comprise of entries relating to roads and bridges, planning for economic and social development and it is in this regard that the Legislature of the State by law endow the Municipality with such powers and authority which may enable them to function as institution of self-governance. However, it will all depend upon the statute which is framed by the Legislature covering either all or some of the subjects as enumerated in 11th Schedule and 12th Schedule but definitely, the planning in Panchayat area cannot be exclusively left to the Panchayats as while preparing the Outline Development Plan under Section 29 of the Goa Town and Country Planning Act, the PDA shall consult the concerned local authority/ authorities before its preparation. However, the argument of Mr. De Sa that the entire planning of

the local area must be left to the local authorities i.e. the Panchayat/Municipality is too far-fetched an argument as in the larger development of a region or development of local area, it may involve various factors and there has to be a correlated development in the whole area and the bodies like Panchayat will lack in expertise in planning and therefore the whole of the planning cannot be left to the Panchayat.

Worth it to note that there is a certain distinction between the entry in Schedule 11th and Schedule 12th. Schedule 11th pertains to the Panchayat and Schedule 12th which pertains to Municipalities, which include the subject like urban planning/ town planning but this entry is not available in case of Panchayats. The local bodies like the Panchayats undisputedly are entitled for having their area developed but development work necessarily need not be left to them by themselves and therefore, while preparing the ODP, it is provided that they shall be in consultation with the local authority/authorities. Therefore, we do not agree with Mr. De Sa that in preparing the ODPs, there was a complete infraction, as that would not be the work assigned to the Panchayat.

143. In any case, we find merit in the submission of Mr. De Sa that as far as the Petitioner is concerned, which was very much interested in the development work of Calangute village, the consideration expressed by the Petitioner ought to have been

given due weightage but instead the objections filed by the Petitioner as well as other villagers were completely overlooked and we agree with Mr. De Sa that change of the zoning as carried out in the new ODPs is more detrimental to the environment as well as to the plan development of village Calangute in the draft ODP, as the area under no development zone are converted into orchard or settlement as well as some areas as orchard has been converted into commercial zone without considering the objections of the villagers. Since Ms. Alvares has placed before us the changes that are effected for Calangute village, we have found various discrepancies but since in the Petition of Ms. Alvares we have restrained ourselves from getting into the merit of the changes that are effected in the new ODPs, as we have already held that in the wake of the fact that the village of Calangute-Candolim ceased to be a planning area, the Revised ODPs could not have been made applicable since the Government decided to withdraw the areas as planning areas and therefore, the consequences of sub-section (2) of Section 19 necessarily followed.

144. Though we find the argument of Mr. De Sa on the point of variance in the zoning of the properties contained in the draft ODP and the final ODP, we do not intend to get into the said discussion for the very same reason; as we have refused to entertain the grievance raised by Ms. Alvares in that regard. Therefore, though the Petition filed by Calangute Constituency Forum and its

members, succeed to the extent that the Calangute -Candolim ODP 2025 published by Respondent No.3 cannot be made applicable for the development to be carried out in the said area, we allow the Petition by declaring that the ODP of Calangute-Candolim- 2025 shall not apply to the said area once they have ceased to be planning areas and necessary permissions shall be granted in terms of RP-2021.

145. For the very same reason, as far as the Petitioner in PIL filed by the Village Panchayat of Calangute, raising a challenge to the ODPs draft, the final revised ODP-2025 on the ground that it is violative of Article 243-G, 243-N, and Sections 238 and 239 of the Goa Panchayat Raj Act must fail. However, since we have already held that the impugned circular, which has made ODPs applicable to the five villages, cannot be sustained, we declare that the permission for Calangute Village, shall not be in terms of the ODP but shall be based upon the Regional Plan -2021.

146. PIL Writ Petition No. 24 of 2023, which seek a relief of setting aside the draft ODP for Calangute/Candolim, as contravening Article 243-G and Schedule 11th and 12th of the Constitution of India, is dismissed as we do not intend to get into the validity of the December ODPs though we have recorded that the ODPs have failed to follow the procedure prescribed under the Act of 1974. In any case, in the wake of the relief granted in PIL

Writ Petition No. 30 of 2023, the December Revised ODP will no longer govern Calangute and Candolim village.

The issue raised in Writ Petition No. 828 of 2023 need not be gone into as it raised a challenge to the validity of ODPs. As we have already formed an opinion that though ODPs will not govern the withdrawn villages, the necessary permissions in the said villages, therefore, would be granted by the Town Country and Planning Department strictly as per the prevailing Regional Plan.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**

147. At this stage, Ms. Jaiswal holding for learned Senior Counsel Mr. Shyam Mehta representing Respondent Nos. 1 and 2-State request for stay, which is strongly opposed by Ms. Alvares as well as Mr. De Sa appearing for the Petitioners.

148. In the backdrop of the two orders passed by this Court on 14.02.2024 and 02.05.2024, staying the effect of the circular as well as the pronouncing upon the validity of the orders that were promulgated when the third Executive Order was issued, in order to override the effect of the interim order passed by this Court and since the Supreme Court refused to interfere and directed this Court to decide the PIL Writ Petitions finally, since we have

pronounced that the Executive Order cannot hold the field in the wake of existing statutory provision, we are not inclined to grant stay.

However, since the State Government undertake that they will not give effect to the permissions and no activities shall be permitted in the five villages for a period of four weeks, we direct that our judgment will not be implemented for a period of four weeks from today.

Date: 23.06.2025.

NIVEDITA P. MEHTA, J. **BHARATI DANGRE, J.**

Signed by: ESHA SAINATH VAIGANKAR
Designation: Personal Assistant
Date: 01/07/2025 14:37:03